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CHRIST AND THE GALLows;

OR,

REASONS FOR THE ABOLITION

OF

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CAPITAL PUNISHMENT.

BY

MARVIN H. BOVEE.

For the Son of man is not come to *destroy* men's lives, but to *save* them.

JESUS OF NAZARETH.

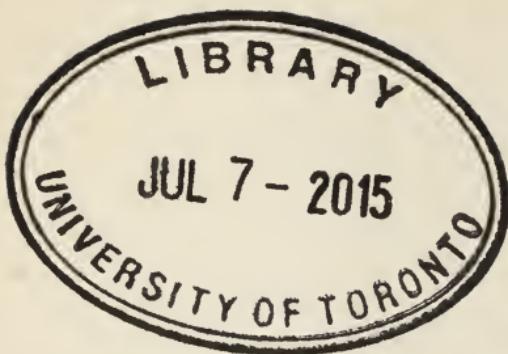
NEW YORK:
PUBLISHED FOR THE AUTHOR,
BY THE
MASONIC PUBLISHING COMPANY,
432 BROOME STREET.

1869.

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TO

MY MOTHER,

NOW IN THE SEVENTY-SIXTH YEAR OF HER AGE,

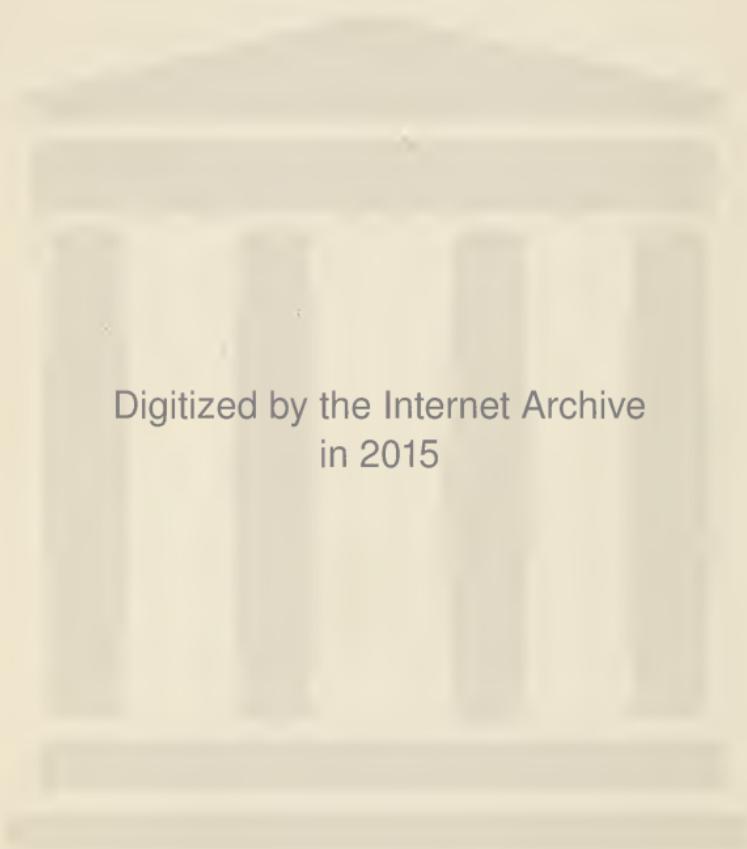
WHO, FOR FORTY-ONE YEARS, HAS CALLED ME SON;

WHO,

From the Earliest Recollections of My Happy Childhood, taught me to hate
nothing but Injustice and Cruelty,

THIS WORK IS AFFECTIONATELY INSCRIBED BY

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THE AUTHOR'S

ENUNCIACTION OF PRINCIPLES.

Penalties which do not contemplate the reformation of the criminal, are not punishments, but cruelties.

The world is my CHURCH, for all mankind are my brothers.

Man is my CREED, for, being made in the image of God, he is worthy of my highest care—my constant study.

Humanity is my SACRAMENT, for he that “drinks deep” from the fountain of benevolence, will become strengthened in kindly purpose; and in the same ratio that he cherishes love for his brother man, will he feel the benign influence of the christian charities enlarging and beautifying his own soul.

P R E F A C E.

IN the winter of 1860, the Author of this volume made a public canvass of the State of New York in behalf of the *Anti-Capital Punishment* Cause. At the conclusion of this canvass, which resulted in securing important modifications to the Penal Code of the State, we were urged by many of the friends of Penal Reform to prepare for publication a work on this subject, setting forth the reasons for the "faith that was in us." The suggestions met our favorable consideration, and assurance was given that it should be presented to the public in the autumn of 1861. To this end, and to add to the general interest of the work, we extended invitations to many of the prominent authors, statesmen, and divines of our country, soliciting their views for publication in the work. A very general response was made to the invitations thus extended ; but before the work was ready for the press, the unhappy civil war had been inaugurated

between the two sections of our Union. To have presented a work of this kind during the continuance of such a struggle, would have been "ill-timed," to say the least; and thus has the work been permitted to quietly sleep in manuscript until the present time. The dates of many of the letters then sent us have been changed with the permission of their authors; others are published as then received, while many fresh opinions have been added.

Now that the white-winged angel, Peace, has come, and come, we trust, to stay, we present this volume to a generous public, trusting that it may prove an auxiliary to the cause of Penal Reform, and an aid to the cause of human progress.

M. H. B.

NEW YORK, 1869.

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CHAPTER I.

INTRODUCTION.

ALL human reforms are accomplished *only* by intelligent and well directed effort, *Theories* which contemplate the elevation of mankind may be fully accepted by society, yet years of incessant labor possibly intervene before practical effect be given them. Man, though credulous in many things which he can not reasonably understand — the acceptance of peculiar tenets in theology — for instance, shakes his head doubtfully when asked to give practical force to certain views which he may have embraced as *reasonably* true.

This feeling of hesitation on the part of man to adapt himself to new and oftentimes better conditions, is almost universal in the human mind, and is induced by the various elements which constitute the conservatism of his nature. Cautious as to leaving well-trodden paths for newer ones over which he may be jostled; doubtful as to promised benefits attainable only through radical changes; dreading

the labor which the promulgation and defense of progressive ideas would naturally force upon him, and fearing, above all things else, the opposition, scorn and contumely which the laborer in the field of human reform ever receives, man shrinks from the uninviting task before him, leaving the work to the few individuals who possess the necessary faith, hope, and courage to "fight the good fight" through which beneficent results are achieved.

Conservatism is the enemy of all progress, and may be personified as a quiet, indolent gentleman, enjoying a respectable old age, longevity and love of ease being the distinguishing elements of his nature. He slumbers in the morning, indulges himself in his siesta, and quietly naps in the afternoon. He don't like to be disturbed in his repose, and if, perchance, you jostle him, growls and grumbles, but makes no farther demonstration. He avoids combat, if possible, for, being of a lymphatic temperament, excitement renders him uncomfortable. True to his instincts, he has opposed every step in progress and reform, from early barbarism to present civilization.

When Progress pointed the telescope heavenward to explore the starry realms of infinitude, and having made such exploration, revealed the startling fact that there were myriads of worlds like our own, rolling through the illimitable fields of space, this same old gentleman protested against the discovery, the mere thought almost producing dizziness.

When Progress penetrated the bowels of the earth, and announced the indisputable fact that hundreds of thousands, perhaps millions, of years had swept over its face, conservatism slightly aroused himself, and said beware! beware! for “Revelation” has settled the question by fixing the earth’s age at six thousand years; beware of treading upon sacred ground.

Conservatism has persistently objected to all sciences and all reforms, to every improvement and every invention, from the year *one* to the present time. Canals, railroads, telegraphs, and every labor-saving invention have uniformly failed to meet his approval. He objected to the law abolishing imprisonment for debt, and shook his head negatively when the exemption law was proposed. True to his nature he has never favored a single proposition that sought to relieve or ameliorate the condition of the unfortunate and down-trodden, and opposes, as ardently as any lymphatic temperament can oppose, any thing which savors of reform.

Conservatism is an element of which progress rarely makes use. It is the indolent or anti-labor element. It is the cowardly element—never courageous or brave in the battle of life. Its policy is non-action—the stand-still policy—the “milk and water” policy—the afraid-to-go-ahead policy—in short, the do-nothing policy. There are, however, some things which we admire in this old gentleman. He is *ever* consistent. True to his negative instincts.

he *uniformly* says no, his vote having never been found recorded in the affirmative. He does not object to results, but deprecates the action necessary to their achievement. He objects to progress, and is equally opposed to retrogression, for either movement implies action. He has done no *positive* harm in the world, nor accomplished any *positive* good. He *lives*, and has a *being*, but never *moves*—will always live, for the elements of dissolution were never given him. Quiet, staid, sober, consistent old gentleman; he will vote to-day *against* the abolition of capital punishment—*to-morrow against* its restoration. *Order* is predominant in his brain, for he *leaves* every thing just where he *finds* it.

Conservatism is, however, an important element, and we would not under-rate its value. It is the brake on the car of Radicalism—the catch-pin in the cog-wheel of reform—the ballast in the old ship Progress—the constant check upon precipitate action. In this light, it is an admirable element. As sentry, it is unsurpassed; for, as Progress carries trench after trench of the enemy, conservatism is placed on guard, and never was trusty friend a more faithful sentinel. Once on guard, it never deserts its post, but true to its negative instincts—to every demand made upon it, it simply shakes its head and says nay.

Notwithstanding conservatism is a constant check upon all needed reforms, and can never be usefully employed in fields of moral revolution, there are,

it must be confessed, many admirable qualities involved in the word. It infolds within its keeping the beautiful element of peace. If conservatism decline combat in behalf of human reforms, it also declines entering sanguinary fields where death and destruction are carried at the bayonet's point or at the cannon's mouth. It says, "blessed are the peacemakers," and lives fully up to the doctrine it professes. Its natural condition is rest. The clash of ideas is reprehensible in its eyes — the clash of arms equally to be condemned. If Conservatism be powerless to evoke moral truths from the world of thought, it is equally powerless to marshal hosts to battle and to death. Thus we find, in war, it is our constant enemy — in peace, our greatest friend. Conservatism; Radicalism: utterly antagonistic, yet how essentially necessary are both elements to the successful and permanent establishment of every human reform. Let us, then, be ever conservative when urged to do the wrong; ever radical when satisfied we are in the right.

In discussing the great question of Capital Punishment, we would address our readers as intelligent beings, possessing human hearts, filled with human affections, human sympathies, and human aspirations. Whatever affects our common humanity, affects each individual member of the human family. Whatever promotes the general welfare of mankind conduces to the good of the individual man. Whatever debases or demoralizes the human race, injuri-

ously affects every member of that race. This, all will admit. We are all creatures of education, association and habit, and very many of our ideas of human governments have been derived from the mass of prejudice which has been handed down from generation to generation; and, although subsequent events may have modified the character of those views, we still find that the prejudices of our early lives have a strong hold upon even our kindlier nature. It is very difficult, indeed, to divest our minds of the prejudices with which they are too often filled. We are not able "to see ourselves as others see us," and while supposing that the motives which actuate our conduct are purely correct, might, by a careful analysis of our own minds, ascertain, perhaps, that we had been self-deceived, and what appears to be the "better angel," is discovered to be simply the deep-rooted prejudices of our natures.

Let us, then, author and reader, in the spirit of charity and kindness, resolve to approach this mighty subject of "life and death" in the prayerful hope that we may arrive at those conclusions which will be grateful to our common humanity, and which will be approved by the virtuous, the wise, and the good.



CHAPTER II.

GOVERNMENT — ITS WAR POWERS.

If men were only subject to Christ's law, then could they never go to war with each other.—BISHOP TAYLOR.

GOVERNMENT, it is frequently said, is a *necessary evil*. The proposition admits of no doubt. The fact that government exists, is, of itself, proof of its necessity. Were all mankind peacefully inclined, morally good, and at all times mindful of the rights of each other, then, indeed, would the burdens which it now imposes be sensibly lessened; and, with a still higher conception and constant practice of the benign principles of Christianity, the *restrictive* powers of government would pass away, leaving but its *form* to remind us of its former necessity; but in the present condition of society, the alternative of anarchy or government is placed before us. The former condition affords no security for life or property, while the latter essays to protect both, however imperfectly it may carry into effect its professed objects.

It is for our ignorance, for our follies, and our wickedness, that we are shackled by the control of government, and in our individual weakness we submit to it as a choice of evils. Says a distinguished writer, "we submit to government only that it may shield us from the heavier curse, the eternal and deadly warfare which men must wage against one another if left in a state of total anarchy, without the possibility of a common arbiter of differences, or a mutual protector from each others' aggressions."

Governments, in all ages of the world, from early barbarism to present civilization, have been maintained either by the direct will of the people, by their submission to the behests of self-constituted authorities, or their acquiescence in the decrees of military chieftains. Marking well the various forms of government, as they have been woven into history, from patriarchal times until we reach our present boasted civilization, we find that, in whatever form governments have existed, they have been maintained only on the assumption that they were essential to the preservation of individual liberty, the security of life and the protection of property; and yet, the conviction is *almost* forced upon us, that governments have been the scourge of mankind—the great violators of every essential principle for which they were established; that governments, as such, have destroyed more life, more property, and to a greater extent jeopardized human liberty, than could have resulted had there been no forms of

government and each individual left to stand upon the immutable law of self-preservation, seeking his own mode of securing to himself those inalienable rights of which government too often deprives him, viz., "life, liberty, and the pursuit of happiness."

This conclusion, though undemonstrable, seems the more reasonable when we consider the fact that *nearly the entire* population of any civilized country, though responsible to its government and amenable to its laws, with liability to penalties for their infraction, nevertheless pass quietly through life without meriting or receiving its threatened penalties; living, as it were, above and beyond all legal restriction; trespassing not upon the rights of others, not because the law binds them thus to act, but from that feeling of our nature which ordinarily teaches us that honesty brings greater happiness than dishonesty—justice, sweeter reward than injustice; in short, that the human heart, when laved by the waters of kindness, rarely manifests itself in acts of cruelty or injustice. The society of Friends have exemplified this theory in a very remarkable manner; for who can read the history of the early settlement of one of our great Middle States without a thrill of admiration. Think of William Penn, the Quaker statesman, founding a colony upon the principles of equity and love; on the sublime Christian principle that it is better to suffer wrong than do wrong; making a treaty with the savages of the forest—with beings rude and uncivilized; human

beings, nevertheless, possessing human hearts and human affections—with a people who had never heard of the Christian religion, nor how frequently it had been disgraced by the many bloody wars which had been fought in its name, and in behalf of its establishment. And when it is remembered that this treaty, whose foundations were laid in peace and good-will by Penn and the savages, lasted for nearly two generations of men without a violation of its stipulations, it is the best commentary that can be offered upon the character of those governments whose foundations rest upon the *sword*. And should the assertion be now hazarded, calling history as our witness, that the *blessings* of government have been too generally outweighed by its innumerable *evils*, the remark will excite no surprise in the minds of those who have carefully analyzed the elements which constitute the organization of governments, and have pondered well the manner in which their operations are conducted.

Without the semblance of organized government, society would undoubtedly suffer in an exaggerated form, perhaps, the same social disturbances which now afflict it; and crimes of all kinds would be perpetrated in a community without the restrictions of law, as they are now committed in *defiance* of the law. In the one case, outrages against humanity, justice or propriety, would be punished with unerring certainty by the immediate relatives or friends of those who had thus suffered, and were *cognizant* of

the guilt of the offending party or parties. In the other case, or under the forms of law, punishments are now meted out by courts and juries who derive their information from the testimony of witnesses only after it has passed through the murky cloud of doubt in which legal acumen ever envelopes the clearest case, and which, when obtained, is oftentimes unreliable.

Without the semblance of organized government, and with our present civilization, no considerable number of individuals could be brought to engage in predatory warfare upon their neighbor's domain. *With* organized governments, how easily effected.

Without the semblance of organized government, wars of aggression and conquest could never attain respectable magnitude. *With* organized governments, millions of human beings are oftentimes forced to take part in bloody struggles which might, perhaps, have been adjusted by peaceful arbitration.

“War,” says Gen. Sherman, in his celebrated letter to the Mayor of Atlanta, in 1864, “*war is cruelty, and you can not refine it.*” An honest confession of a distinguished military chieftain; and had the eminent general, then and there, publicly renounced the profession of “arms,” that renunciation would have transformed the military hero he then was, and now is, to the great moral hero he *would have been*. War is, indeed, the refinement of cruelty. It is a withering, a blighting curse—the great obstacle in the pathway of Christian civiliza-

tion. War has been the bloody temple in which governments have educated their children; the strong arm of Might, the great arbiter between nations; and questions in dispute between contending powers have been too often adjusted at the bayonet's point or at the cannon's mouth.

Some of the purest and most intelligent minds the world has ever produced, have borne concurrent testimony to the barbarism of war. Though a hackneyed subject, as it is called, yet, one would think it too terrible ever to become commonplace. Dr. Channing, in speaking upon this subject, uses the following forcible language:

Is this insanity never to cease? At this moment, whilst I write, two of the freest and most enlightened nations—having one origin, bound together above all others by mutual dependence, by the interweaving of interests—are thought by some to be on the brink of war. False notions of national honor, as false and unholy as those of the duellist, do most toward fanning this fire. Great nations, like great boys, place their honor in resisting insult and in fighting well. One would think the time had gone by in which nations needed to rush to arms, to prove that they were not cowards. If there is one truth which history has taught, it is, that communities in all stages of society, from the most barbarous to the most civilized, have sufficient courage. No people can charge upon its conscience that it has not shed blood enough in proof of its valor. Almost any man, under the usual stimulants of the camp, can stand fire. The poor wretch, enlisted from a dram-shop and turned into the ranks, soon fights like a hero. Must France and England and America, after so many hard-fought fields, go to war to disprove the charge of wanting spirit? Is

it not time that the point of honor should undergo some change, that some glimpses at least of the true glory of a nation should be caught by rulers and people? "It is the honor of a man to pass over a transgression," and so it is of states. To be wronged is no disgrace. To bear wrong generously, till every means of conciliation is exhausted; to recoil with manly dread from the slaughter of our fellow-creatures; to put confidence in the justice which other nations will do to our motives; to have that consciousness of courage which will make us scorn the reproach of cowardice; to feel that there is something grander than the virtue of savages; to desire peace for the world as well as ourselves, and to shrink from kindling a flame which may involve the world—these are the principles and feelings which do honor to a people. Has not the time come when a nation professing these may cast itself on the candor of mankind? Must fresh blood flow forever, to keep clean the escutcheon of a nation's glory? For me, I look on war with a horror which no words can express. I have long wanted patience to read of battles. Were the world of my mind, no man would fight for glory; for the name of a commander, who has no other claim to respect, seldom passes my lips, and the want of sympathy drives him from my mind. The thought of man, God's immortal child, butchered by his brother; the thought of sea and land stained with human blood by human hands; of women and children buried under the ruins of besieged cities; of the resources of empires and the mighty powers of nature all turned by man's malignity into engines of torture and destruction—this thought gives to earth the semblance of hell. I shudder, as among demons. I can not now, as I once did, talk lightly, thoughtlessly, of fighting with this or that nation. That nation is no longer an obstruction to me; it is no longer a vague mass. It spreads out before me into individuals, in a thousand interesting forms and relations. It consists of husbands and wives, parents and children, who love one another as I love my own home. It consists of affec-

tionate women and sweet children. It consists of Christians, united with me to the common Saviour, and in whose spirit I reverence the likeness of his divine nature. It consists of a vast multitude of laborers at the plough and in the workshop, whose toils I sympathize with, whose burdens I should rejoice to lighten, and for whose elevation I have pleaded. It consists of men of science, taste, genius, whose writings have beguiled my solitary hours, and given life to my intellect and best affections. Here is the nation which I am called to fight with, into whose families I must send mourning, whose fall or humiliation I must seal through blood. I can not do it without a clear commission from God. I love this nation; its men and women are my brothers and sisters. I could not, without unutterable pain, thrust a sword into their hearts.

In general, war is the work of ambitious men, whose principles have gained no strength from the experience of public life, whose policy is colored, if not swayed, by personal views or party interests; who do not seek peace with a single heart; who, to secure doubtful rights, perplex the foreign relations of the state, spread jealousies at home and abroad, enlist popular passions on the side of strife, commit themselves too far to retreat, and are then forced to leave to the arbitration of the sword what an impartial umpire could easily have arranged. The question of peace and war is too often settled for a country by men in whom a Christian, a lover of his race, can put little or no trust; and, at the bidding of such men, is he to steep his hands in human blood? But this insanity is passing away. This savageness can not endure forever, however hardened to it men are by long use.

Just so long as governments stimulate the vengeful passions of men by giving them employment in fields of blood, with full license to cut each others' throats, it is scarcely reasonable to suppose that

these lessons of brutality will be entirely lost upon those who have so well learned them under governmental instruction. On the contrary, war, instead of being the repressor of evil, is the great progenitor of crime. Its tendency is utterly demoralizing. It matters not how good the cause in behalf of which war is waged, its immediate effect is to lower the moral tone, and to lessen the respect for human life. Man is a creature of habit, and it is unreasonable to expect that any considerable number of men, who for years have been licensed to kill their fellow-creatures, should, when returned to the private walks of life, possess so great a respect for human life as to preclude the possibility of now and then a murder on individual account. Whilst the great majority would endeavor to make a moral distinction between killing at wholesale by order of the government, and the slaying of an individual on private account, there would undoubtedly be, and have been, instances furnished us, where the individual had evidently confounded the distinction which *wise* statesmen endeavor to draw, or else did not care to make that distinction. A soldier who was convicted for murder, in Exeter, England, on being removed from the bar after the sentence of death had been passed upon him, exclaimed to the bystanders, “I have killed plenty of men to please the king, and why should I not kill one to please myself?”

War means murder. It means arson. It means

larceny. It means cruelty. Its lessons are unholy, and full of wickedness. There is scarcely a crime known to the criminal calendar which is not the accompaniment of war. We will not say that war authorizes all these cruelties, but it embraces all. It winks at, if it does not countenance, all crimes when perpetrated against the common enemy.

Nor are these examples of brutality, so often furnished by governments, lost sight of by ambitious and scheming individuals. In all forcible seizures of governments by daring and unprincipled men, war finds its bloody counterpart in the atrocities committed by the usurpers of power. The history of the French Revolution, familiarly known as the “Reign of Terror,” clearly illustrates what horrid crimes may be perpetrated in the name of popular liberty. From the abdication of Louis XVI., in 1789, until the restoration of the Bourbons, in 1815, a period of over *twenty-five* years, France scarcely knew a moment of internal peace. Robespierre and his conspirators, in the name of liberty, had seized the reins of government, and through the forms of a convention had led Louis XVI. to the scaffold, which event was speedily followed by the execution of the unfortunate Queen Marie Antoinette. During the reign of these bloody conspirators, individual liberty existed but in name, while human life was held as nought. France was in mourning for her murdered offspring, and Paris became the great slaughter house for the victims of the usurper’s

power. The “reign of terror” continued with unabated fury, until the summary execution of Robespierre and his principal associates in crime, checked for a time this carnival of blood. At this juncture, or shortly after, appeared the young chieftain whose military exploits were to startle the world with the splendor of their achievement. He sought to restore domestic tranquillity to France by gigantic military enterprises, directed against neighboring states and provinces. In this, he too well succeeded; and though domestic peace was, to a great extent, restored to her people, the drainage of blood was even greater than before, though now poured out by the cruel mandate of war upon other soil than France.

Let us briefly inquire the object of these enterprises. Why stood the great chieftain on the plains of Egypt? What his great mission in Italy? For what purpose, his “peninsular campaigns?” Why hazard death and defeat amid the snows of Russia? Did the peace and happiness of France demand these tremendous drafts on her people and upon her treasury? Far from it. Ambition, conquest, love of power, were the causes which produced these mighty results. And Napoleon; he who startled the world by his military daring, and plunged nations in the vortex of war; he, who had throned and dethroned kings, and dictated terms to nearly every power in Europe, himself fell a victim to the hazard and chances of war; and, on a “lone, barren

isle," away from home and friends, far from the scenes of his victories and his triumphs, a prisoner in the hands of a Power which he had vainly sought to humble, he breathed away his life in mortification and chagrin. "Time makes all things even;" and he whose pathway through life had been marked in human blood, felt the keen anguish entailed by his blasted hopes; while misery, disappointment and regret naturally surrounded his couch, and mocked him in his dying hours.

Can it be urged that these aggressive wars of Napoleon were essential to the peace or safety of France? Were they to protect the lives, the liberties, or the property of her citizens? Let the graves of the *two millions* of her best sons who perished in these wars, be the silent but solemn answer to the interrogatory.

The recent civil war of our own country illustrates the fact that our boasted civilization stands sadly in need of a *still higher* civilization. Four years of war between two sections of one common country; fought by people claiming the same origin, speaking the same language, and bound together by the ties of blood, affinity, or commercial interest; four years of bloody, fratricidal war, in which over half a million of men, who should have been brothers, found early graves; four years of war, during which gray-haired parents sat beside desolate hearths, waiting for sons who would never again make glad their hearts; four years of war, during

which wives waited in vain the coming of husbands who had vowed at the altar to love, cherish, and protect them; four years of war, during which tens of thousands of orphans went weeping throughout our broad land, many of whom are, to-day, eating the bread of charity; four years of war, in which passion, hate and revenge usurped the places wherein benevolence, justice and charity should have dwelt; four years of war, in which men professing Christianity sought the life-blood of their professedly Christian adversaries; four years of war, in which the *ministerial* robe was often seen drabbled with human gore; four years of war, during which the Cross was nearly forsaken, that *divine* worship might be given to the sword; four years of war, during which the beautiful language of the Saviour, “Blessed are the peacemakers,” was held in contempt, and those who sought to give practical force to the precept were proscribed in social or business relations, and oftentimes assaulted in their persons; four years of war, and for what purpose? That statesmen, legislators, and those holding authority, might be enabled to see the very things which they ought to have seen,—to do the very things which they ought to have done, without the intervention of war. Must these things ever be? Is war never to cease amongst men? *Never*, until the people in their sovereign power shall determine for *themselves* this question of war, and no longer permit this tremendous power—this grave responsibility, to rest

in the hands of misguided and unscrupulous politicians. But of the remedy we shall presently speak.

Future historians will endeavor to interpret the causes which produced the civil war of the United States, and those interpretations will be colored by the bias of the author for that side in the contest which may have had his sympathies. One author may charge the crimes of the war upon one section of our country, and another writer may attribute the causes to the other section. But it will be found, we think, that our recent war, in common with all other wars which have preceded it, had its origin in the bad passions of men. There are ever two parties to a quarrel, and when passionate statesmen, representing conflicting interests, are permitted to indulge their feelings of malevolence and hate without hindrance from the people, war may be expected at any moment.

When we cast our eyes upon the pages of the past, and reflect upon the solemn historical fact that countless millions of human beings, like so many automatons at the touch of the operator, have been led to battle and to death, to gratify the capricious moods of wicked rulers and ambitious statesmen, wonder is excited, that any people, however abject or servile, should be found ready and willing to yield compliance with demands so monstrous and unjust. Aside from those moral considerations by which human action is, at times, supposed to be influenced and directed, it would seem that the love

of life—the instinct of self-preservation, would have a controlling influence in disposing men to the peaceful pursuits of life. But, alas! how vain the speculation. Government in all ages of the world has maintained the necessity for war, and has so cunningly concealed its hideous features by the pomp and splendor of its adornings, by its adulations of the heroes of the strife, whom it has bedecked with tinsel, ribbons, “stars and garters,” that the common people have been utterly blinded to the merits of the contest to which they have been invited, or in which they have been forced to take part. Thus, have governments, in the name of liberty, and under the plea of overruling necessity, called myriads to arms, letting loose the thunderbolts of war, desolating homes by fire and sword, and drenching fields of peaceful industry with the blood of the slain. And these barbarities have been perpetrated by governments under the puerile plea, of extending to life, liberty and property, more ample security—more certain protection.

As an abstract proposition, all bear willing testimony to the horrors, aye, the shocking inhumanities of war; yet how few of us have a true conception of its dreadful realities. It would puzzle the scholar of deepest research to give an approximate estimate of the loss of life occasioned by the ravages of war in the centuries which have passed away. Were all its victims now upon the face of the earth, it would tax the energies of the living for many weary

years to give decent interment to the slain; and could they be marshaled in one vast procession, endowed with life, and compelled to pass a given point, it would require centuries for this mournful pageant to complete its solemn tread.

In speaking of the horrors of war, Dr. Dick uses the following language:

“ Since the creation of the world, fourteen thousand millions of human beings have fallen in the battles which man has waged against his fellow creature — man. If this amazing number of men were to hold each other by the hand at arm’s length, they would extend over fourteen millions five hundred and eighty-three miles of ground, and would encircle the globe on which we dwell, one hundred and eight times. If we allow the weight of a man to be on an average one cwt. (this is below the mark,) we shall come to the conclusion that six millions two hundred and fifty thousand tons of human flesh have been mangled, disfigured, gashed and trampled under foot. The calculation will appear more striking when we state that if only the forefingers of every one of these fourteen thousand millions of human beings were to be laid in a straight line, they would reach more than six hundred thousand miles beyond the moon; and that if a person undertake to count the number, allowing nineteen hours a day, and seven days in a week, at the rate of six thousand per hour, it would occupy that person three hundred and thirty-six years. And, awful is the consideration! three hundred and fifty thousand pipes of human blood have been spilt in battles! Who would not exclaim with Bishop Hall, ‘ Give me the man who can devise

how to save troops of men from killing, his name shall have room in my calendar. There is more true honor in a civic garland for the preserving of one subject, than in the laurel for the victory over many enemies.' Or, with Bishop Taylor, 'If men were only subject to Christ's law, they could never go to war with each other.'"

Were the injuries inflicted by war restricted to those who *voluntarily* enter its service, much less, perhaps, might be written upon the question; but when the calamities of these unhappy contests fall quite as heavily upon the innocent as upon the guilty,—as well upon the peaceful citizen as upon the belligerent; upon those who may have taken no part in the inauguration of the strife, and desired no participation in its cruelties, then, indeed, should the voice of humanity be raised against the further use of war as the arbiter of differences between nations; for we all know how unjust are its demands, how inexorable are its decrees. No home is secure from the searching eye of the destroyer. The life which God gave to man is denied him by the bloody invader of the home circle. The husband who delights in paths of peace, and has vowed at the altar to love and protect the wife he has chosen, is denied the fulfillment of his obligation by the monster—War. Conscription, with merciless grasp, tears the husband from the wife, sundering, and oft-times *forever*, the ties which bound them together. Father, husband, brother, son, all, are brought

within the bloody vortex of the strife. The most sacred affections of the human heart are trampled in the dust, and the sweetest ties of domestic bliss rudely severed by its relentless decrees. The greater calamities of these contests fall, with crushing force, upon those who, from their very weakness, are forbidden to enter the bloody arena. The aged, the infirm, the weak, the dependent, the mother, the wife, the sister, the child—all these, who need the strong arm of health to protect, assist, or support them, are excluded from military service, while the very aids and supports which they so much need, are taken from them, to be used in maiming and killing their adversaries,—adversaries, not because they are such, but because government *says* they are.

In war, weakness and helplessness remain at home, while strength and vigor go forth to battle. The varied miseries of the battle-field are vividly reproduced in the home circle. The bullet which passes through the head of the soldier son, has rarely finished its work; but, hundreds of miles away, it oftentimes shocks the brain and kills the mother. The bayonet that takes the life-blood of the husband, frequently pierces the heart of the wife, many miles from the bloody field. Failing to kill, it desolates the affections, and fills the life, once happy, with sad and bitter memories. The soldier dying upon the battle-field, leaves to the “loved ones at home,” a heritage of misery and tears. A good military record he may have had, a brave soldier he may

have been ; but he fell to sleep, not by the peaceful operation of natural law, but by the hand of violence, in the service of a government the justness of whose cause he is never to question. But the sickening horrors of war are so apparent to every reflective mind, that it seems almost superfluous to reiterate them. There are, however, so many sad incidents connected with war, which awaken the sympathies of our nature in behalf of its many victims, that we are constantly asking ourself the question, "Why is war permitted amongst civilized nations?" The correspondent of the "Louisville Courier" relates an affecting incident which occurred on the field of battle, from which he was writing, during the war between the United States and Mexico. He says :

"While I was stationed on our left wing in one of the forts, on the evening of the 21st, I saw a Mexican woman busily engaged in carrying bread and water to the wounded men of *both* armies. I saw this ministering angel raise the head of a wounded man, give him water and food, and then carefully bind up his wound with a handkerchief which she took from her own head. After having exhausted her supplies, she went back to her own house to get more bread and water for others. As she was returning on her mission of mercy to comfort other wounded persons, I heard the report of a gun, and saw the poor, innocent creature fall dead. I think it was an accidental shot that had struck her. I would not be willing to believe otherwise. It made me sick at heart, and, turning from the scene, I involuntarily raised my eyes toward Heaven, and thought, Great God! and is this war? Passing the spot next day, I saw her body

still lying there, with the bread by her side, and the broken gourd, with a few drops of water still in it,—emblems of her errand. We buried her, and, while digging her grave, cannon balls flew around us like hail."

There is scarcely an individual who will not yield willing testimony to the shocking barbarities of war, yet, perhaps, at the same time declare a belief in its necessity. Wars, it is urged, have always existed; and as, in all ages of the world, the sword has been unsheathed in the settlement of questions in disputation between nations, therefore, wars will, from time to time, be found necessary to the proper adjustment of national difficulties; hence, wars are necessities, or they would pass forever away. While we deny that wars are essential to the advancement of Christian civilization, or that the invocation of the sword is necessary to the achievement of human reforms, we are quite willing to admit that just so long as society maintains the necessity for war, just so long will ambitious and wicked men furnish the *pretexts* for that very *necessity*. And this brings us to the inquiry: "Who are the prime movers in the inauguration of these wicked scenes?" The people? We have no recollection of the people being consulted in regard to the matter. Why, then, are wars permitted, when the people, in behalf of whose interests, it is alleged, wars are prosecuted, have no voice in the determination of the question of war or of peace? In the history of the world, we find that wars are authorized by the monarch, the

“directory,” the “chambers,” the “executive,” the “congress,” or by some individual or individuals claiming authority thus to act. Men high in authority, representing the dignity of states or nations, will undertake to maintain the honor of a government in a manner which would be a disgrace to, if imitated by, the ignorant youth of any country town. Because *statesmen* (we use the word in a *courteous* sense) can not persuade each other to see the same changing colors in the kaleidoscope of political action, by reason of dull, prosy correspondence, in which the “splitting of hairs” may constitute its chief importance, then compulsion, through the avenging sword, is the *dernier resort*, and this is called *statesmanship*. And after years of cruel war, during which the infuriated passions of these war ministers may have had time to cool, then the pen is again invoked—correspondence ensues—the *same statesmen now* see things in the *same* light—a treaty of peace is made, in which the cause of the quarrel is rarely alluded to—war ceases, and this is called *diplomacy*. And it is a notorious fact, that in the treaties of peace which have concluded some of the most terrible wars the world has ever witnessed, not the slightest allusion has been made to the *cause* of the quarrel. Are not proceedings of this character monstrously wicked, and full of shame and disgrace? Is there no remedy for this great evil? Yes, in our own free land, where the people are sovereign, the solution of the war prob-

lem is plain and simple. Let us see. We find in an old ballad a stanza which contains more than a kernel of genuine philosophy, and is the key to the practical solution of the war question :

"All the world should be at peace,
Or, if kings must show their might,
Why, let those who make the quarrels
Be the only ones to fight."

As greatly as we abhor the prize-ring and the duello, they contain one feature, at least, which bears the semblance of honor. Those who *make* the quarrels are the *principals* of the fight. No shirking in these exhibitions, as in war; for in the latter case the instigators of the strife—the principals of the quarrel, ingloriously and shamefully constrain others to do the bloody work of their hands; thereby establishing a clear title to unquestionable *bravery* in counseling war, and to indisputable *cowardice* in shirking its bloody realities upon the battle-field. But there will be no marked change in the situation of affairs between war ministers and the people, until the latter are made to understand that too many of the so-called statesmen of the world are but the wily fomenters of public disorder, and the ready instigators of war and the many crimes which follow in its train. At present, therefore, we may not expect that cabinet ministers will do their own fighting,—that those "who make the quarrels will be the only ones to fight." But there is one point on which we do most solemnly insist, and it is this:

if those who make the quarrels will not do the fighting, then, indeed, shall those who do the fighting have a voice in making the quarrels; in other words, the people shall determine for themselves whether they desire peace or war. Statesmen will probably object to a decision by the popular will; fearing, perhaps, that the people in declaring for peace might compromise the national honor; but it seems to us that the popular voice in thus declaring for peace would bring a crown of glory to any nation, where an adverse decision by ministers of war, would bring damning and lasting disgrace to its name.

Speaking, then, for ourself and for our own country, we demand, in the name of the people of the United States, in behalf of the laboring classes who furnish the bone and sinews of war; in behalf of the toiling millions upon whom its calamities fall with crushing force; that they shall be exempt from any further military service in behalf of our government, unless that government permits the people to determine, through the ballot-box, whether war is necessary to the happiness or welfare of themselves; and to this end we would amend the Constitution of the United States, by taking from Congress the war power which was originally delegated to it by the people, and returning it to the people whence it came; then, when our statesmen find themselves unable, in peering through the “gimlet-hole” of diplomacy, to discover light, and deem war essential

to the improvement of their *vision*, let the question be submitted to the electors of the several States, their votes to be taken *viva voce*, and their names duly recorded for or against war; then, if a majority of the electors declare for war, let war come; but if, in its duration, the *volunteer* force of the country should become entirely exhausted, and *conscription* an absolute necessity, let its operations be rigidly confined to that class of electors *who voted in favor of war*. This, we think, would terminate all wars to which the United States might, under our present system, become a party,—would place within the keeping of the people, where it properly belongs, the sacred boon of peace, and render them the masters instead of the servants of the “situation.”

Although we have but recently emerged from the toil and smoke of a four years' internal struggle, a speck of war is even now discovered in the political heavens which the skill of diplomacy is endeavoring to dissipate. An indemnity of *one hundred millions of dollars* is demanded of one of the most powerful of European nations; damages said to have been inflicted upon American commerce during the recent strife, by vessels of war said to have been “fitted out” with the assent and within the waters of this *professedly* neutral power. This claim of our government is responded to by evasion and ambiguity, the chief elements of diplomacy; and a positive refusal on the part of England to indemnify our government, who speaks for her citizens, will, it is

believed, be considered a sufficient cause of war. Shall two highly enlightened and professedly Christian nations engage in war that their respective statesmen may possess a better knowledge of mathematics? Engage in war, with the possible expenditure of *five hundred millions of dollars*, and at a cost of, perhaps, *one hundred thousand lives*, that the war cabinets of the respective governments may effect a compromise? We trust not. But, says the "war man," "our national honor demands the enforcement of these claims." *True* national honor will never insist upon the employment of means so disgraceful, to accomplish ends however desirable. Must nations still go to war to avenge fancied or real wrongs? Must a government, like the school-boy who punishes his comrade for knocking the chip from his shoulder which he himself had placed there and dared him to remove, inflict injury upon another power because that power may meet braggadocio and insolence with resentment and scorn?

If, then, the fabric of society can be maintained *only* by mutilating and destroying its members; if a country can be saved *only* by destroying its countrymen; if property can be protected *only* by desolating and imposing upon it endless and burdensome taxation; if human rights are to be secured *only* by jeopardizing and destroying them; if the people are to be made *wretched* that they may be made *happy*; if *these* are the *peculiar blessings* of government, we respectfully decline the surrender of life, liberty or

property, to the maintenance of so monstrous a solecism; and as an evidence that we are not lacking in justice or magnanimity, if government will relieve us of the many burdens which war imposes, we will cheerfully release it from all further obligations to protect us in life, limb or property, choosing, rather, to stand upon the immutable law of self-preservation, securing to ourself, through the manifestations of kindness and charity, that individual protection which government now essays, but *fails*, to give, even through the agony, and tears, and blood of her citizens.

War should no longer receive the sanction of the virtuous and good. Gospel teachers should never undertake to reconcile its lessons with the precepts of Christianity. The youth of our country should be taught that it is not only a calamity, but a crime. A correct public sentiment should close the avenues to honor and distinction against all who seek preferment through the blood of mankind. Standing armies should be no longer employed to eat the bread of idleness, and to waste the substance of the people. Disarmament should become universal. The demoniac spirit of war should give place to the Gospel of Peace; and to this end, all good citizens should use every honorable exertion to bring war into merited and lasting disgrace; and, whatever of evil may befall us in this changing sphere of earthly action, we shall take great care to discourage any ambition for those public positions which would

require of us the duty of placing the rope around the neck of our fellow-man, or of carrying implements of death upon the “tented field.” Scenes of brutality will never be sanctioned by our presence nor encouraged by our voice; and we trust the day is not far in the future, when it will be esteemed a greater honor to bear the “crown of thorns” than to wear the epaulettes of the military chieftain.

In concluding our remarks upon war, we do not intend to heap odium upon any of the votaries who worship at its shrine, nor do we desire to impugn the motives, nor question the honesty of purpose, of any individual who may have been, or is to-day, engaged in its employ. Filled with a duty from the discharge of which we can not shrink, we attack war as we would attack any gigantic evil, before whose terrible proportions the individual man passes into utter insignificance.

Turning, then, from the gloomy past, let us prepare to receive the light which a cheerful Christianity is casting o'er the pathway of the future. The Christian religion is neither a myth nor a mockery, but possesses a vital power which seems to be too little comprehended and too feebly practiced in our day and generation. The religion of Christ is not of recent origin; but far back, even beyond the birth of the Saviour, its foundations rest securely upon that great system of jurisprudence which the Great Jehovah gave to the children of men amid the thunders and lightnings of Sinai; and of *especial*

importance is that great precept, ~~Thou~~ *Thou shalt not kill*, ~~which~~ which, constituting one-tenth portion of the great decalogue, is as binding to-day upon all human governments as upon the individual man.

There is much, indeed, in our present civilization which gives hope of permanent peace amongst the nations of the earth. And as we read that, after the submersion of the earth, the Creator set his bow in the cloud as a token that the world should no more be deluged by flood, so may we hope that the same kind Providence will span the moral heavens of our existence with the “rainbow of promise,” as a token to the children of men that the world shall no more be deluged with human blood; as a sign that the period has at length arrived when “swords shall be beaten into plowshares and spears into pruning hooks”—when man shall learn war no more forever; that, loving his neighbor as himself, he shall realize the fullness and the richness of the gospel of glad tidings of great joy which shall be unto all men,—the harbinger of that glorious day which gives assurance of a “heaven upon earth,”—a paradise of enduring and unending delight.



CHAPTER III.

THE RIGHT OF GOVERNMENT TO INFILCT THE PENALTY OF DEATH AS A PUNISHMENT FOR CRIME, EXPLICITLY DENIED.

There is more true honor in a civic garland for the preserving of one subject, than in the laurel for the victory over many enemies. — BISHOP HALL.

HE taking of human life by process of law, which, for many centuries, has been regarded as absolutely necessary to the security and well-being of society, has, under the enlightened policy of free and republican institutions, become a subject on which there is to be found a very wide difference of opinion.

While many still regard the punishment of death with an eye of indifference, and endeavor to smother all doubts which may arise in their minds, with the reflection that it is the established statute of by-gone ages, others have become convinced that it is a monstrous sin, and that the penalty of death for the commission of crime, is, under any and all circumstances, a wrong, beyond which there can be none greater. Theologians, with few exceptions, in all ages of the world, have endeavored to maintain the “bloody

law" by Scriptural quotations, basing their arguments on the penal code of the Jews, and ascribing its enactment to Deity; while others, again, believe it to be an unrighteous act — repugnant to the better feelings of man's nature, in direct opposition to the spirit of a liberal and enlightened form of government, and at complete variance with the principles of a pure Christianity as derived from the Gospel of Nazareth.

Many persons have advocated the abolition of the death penalty, for the reason that it is not sufficiently severe and protracted in duration; and recommend, instead, *solitary confinement for life* — thus placing the unfortunate criminal in a situation where they may witness, and perhaps exult over, his tortures until the sands of his life are exhausted.

Others, again, have advocated its repeal, assigning as their reasons — first, the great aversion which exists in the public mind to this irrevocable penalty, rendering it almost impossible to obtain jurors from the more intelligent portions of community, thereby placing life at the disposal of men but little qualified to judge of the law and the evidence; secondly, that from the fallibility of human testimony, as it is *wrong* from witnesses, by ingenious attorneys, on direct or cross-examinations, the innocent frequently suffer conviction and subsequent death.

To the last argument in favor of its repeal, much weight may be attached; but, in arriving at the conclusion that there is no right existing by which man

may justify himself in destroying his fellow-man, we assume the broad ground, that the taking of human life by legislative enactment, is, under any and all circumstances, not only a grievous wrong to the unfortunate criminal and his family, but is a direct assault upon the morals of community, demoralizing in its tendency, and, in its baleful effects, seriously retarding the expansion and unfolding of those correct moral principles, the perfect growth of which would render mankind peaceful and happy; that if the commission of the crime of murder by individual man is a sin, the perpetration of the same act by society can not be called a virtue; that if life is sacred in the one case, it is in all cases; and the act which is denounced as an infamous crime in the individual man, can not be regarded as a punishment when inflicted by community.

Society has, with some degree of propriety, been termed a compact or partnership, composed of individual members, who feel an interest in its welfare, and possess an influence in its proceedings. Individuals, when entering into this compact as partners, agree to surrender to society the smallest possible portion of their rights, for the purpose of more effectually securing the greater portion of rights which they did not surrender. For instance: individuals, through their representatives, consent to be taxed; thus conceding to government the right to seize upon a small portion of their property, for the purpose of securing to themselves redress when

wrongs may have been committed, and also for the preservation of peace and order. In the present imperfect state of society, no one will deny this right. Furthermore, individuals possess the same right which is claimed and exercised by the compact. *Two* individuals may enter into a similar agreement, mutually conceding to each other, by contract, certain rights to property which they may have held; and this, too, without the interference of government. Here, then, individuals exercise the same rights which, by common consent, are accorded to government.

Let us, now, go one step farther. Did we, in entering this compact as partners, concede our title to that life which was given us by our Creator? Had we the right to place our lives at the disposal of a majority, whose uncertain and oftentimes inexplicable decisions no man can foresee? In case of certain alleged offenses, are our lives to be placed at the disposal of the majority, which is liable, at times, to become excited and blinded with passion? Is human life to be tampered with by passion and prejudice? In short, does man possess the authority to delegate to his fellow man the complete control of that life-giving principle which was given him by his Creator, and which belongs to Him alone? Are our lives at our own disposal? Can we declare forfeit, that which does not belong to us? It can not, for an instant, be admitted; for, if it be urged that man's life belongs solely to himself, independ-

ent of superior claims—that he has a right to dispose of it as he may deem proper, then, indeed, has man the undoubted right to destroy himself, which few persons will be willing to admit.

The question may now be asked: Have *two* individuals the right to enter into an agreement that, in case one of the parties burns the dwelling of the other, or wrests from him his purse on the highway, the wronged man shall possess full power and privilege to murder, in cold blood, the offender? or, in case the other should first offend, he should be served in like manner? Would *two* men, we ask, have the right to enter into a compact of this nature? No one will admit it. Have *ten* men the right to enter into a league of this kind? Certainly not. Should *one hundred* men enter into an agreement, conceding to each other their title to life, in certain contingencies, would such a contract be based upon correct principles? Would society wink at a partnership like this? No; it would be regarded as an infernal league, or banditti, and measures would be promptly taken to bring every member of this association to justice. If, then, such an association would be regarded as violating all principles of right, would not a similar compact, entered into by *fifty thousand* or *one million* individuals, through their representatives in legislature assembled, be equally as void of all principles of justice? Would the moral character of the transaction be varied a hair's breadth,

whether entered into by *two, ten, one hundred, fifty thousand, or one million* individuals ?

Where is the authority for society to say to individuals, "Ye shall not murder, for that power is delegated to us?" To the ten men, "Ye shall not, by any agreement of yours, destroy one another's lives, for that is a right belonging exclusively to us?" To the one hundred men, "Ye shall not, by any contingency that may arise, deliberately strangle one of your partners, for that would be foul murder; but we possess the right to do what ye shall not. It is a fearful thing for you, as individuals, to commit the crime of murder; but when we, by legal enactment, put to death one of the members of the compact, it is then a righteous deed?"

The Hon. Robert Rantoul, in speaking of a compact of this nature, uses the following language :

"What precise number of persons must engage in it, in order that what was criminal before may become innocent, not to say virtuous; and upon what hitherto unheard-of principles of morality, is an act of murder, in an individual or small corporation, converted into an act of justice, whenever another subscriber has joined the association for mutual sacrifice? It is a familiar fact in the history of mankind, that great corporations will do, and glory in, what the very individuals composing them would shrink from or blush at; but how does the division of the responsibility transform vice into virtue, or diminish any crime?"

As an illustration of the confused ideas which prevail in the minds of men, on this point, let us

cite a single instance, which will be remembered by any person who is familiar with the political history of the State of New York. There exists in this country to-day, and has existed for the past century, a secret society, known by the name of "Free Masons," said to have had its origin far back in the "misty past," and in the State before mentioned, prior to 1826, it had attained great popularity and commanding strength. The opponents of this society were, however, numerous and active, and ready, at all times, to bring the association into public disgrace. It was alleged, on the part of the anti-Masons, that the members of the "Fraternity" were bound together by horrid and solemn oaths, and were compelled, so far as it was in their power, to screen each other from all punishments to which they might become liable in consequence of violating the laws of the government; in short, that the members were bound to protect each other from all harm that might threaten them from the "outer world." It was further urged against this "association," that, in case any one of its members should betray the secrets of the "craft," his life should be declared forfeit, and vengeance, "swift and sure," should visit the transgressor.

About the period alluded to (1826), one Morgan, who was supposed to belong to the "association" referred to, suddenly and mysteriously disappeared, and has never, it is said, been heard of, from that time until the present. The anti-Masons imme-

diately charged upon the Masons the abduction and murder of Morgan. What gave plausibility to their allegations, was the fact that, shortly prior to his disappearance, there appeared a so-called *exposé* of the secrets of Masonry, said to have been written by said Morgan; and in consequence of which *exposé*, it was alleged, he had been put to death by the members of that Society.

Whether Morgan was murdered by the Masons, or by the anti-Masons, as many supposed, for the purpose of bringing Masonry into disrepute; whether he voluntarily abandoned home and friends, and died abroad, as many have done, for reasons best known to themselves; or, whether the published revelation was a fiction or a truth, is immaterial to the purpose we have in view. Suffice it to say, that the simple allegation (and there was no proof) that the members of a secret society had destroyed one of its partners, excited the public mind to such an extent, that Masonry, in the State of New York, "at one fell blow," was laid prostrate at the feet of its antagonists; and so powerful were the prejudices of the people against this formerly powerful institution, that, for several years, the merits and demerits of this secret society, entered very largely into the local politics of that period. Now, let the question be asked: What had so excited the people against the institution of Masonry? Because it was believed that one of the members of the "craft" had suffered abduction and death at the hands of his fellow

members; and this, too, it was urged, in accordance with the solemn obligations and prescribed rules of that "order." And yet, while public condemnation was directed against Masonry, for the alleged or supposed murder of one of the members of that compact, the State of New York was frequently engaged in the bloody work of *judicially* murdering those of her own citizens whom her courts might pronounce guilty of certain crimes termed capital. Why, we ask, denounce Masonry for the *supposed* commission of an act of which the State herself was, at times, *absolutely* guilty? We fail to discover any consistency in that system of reasoning which, while condemning Masonry for the *supposed* murder of a member of that "compact," will sustain an "act" (capital punishment), as atrocious and wicked, in every respect, as that alleged to have been perpetrated by the "Masonic fraternity." If it were a crime for the Masons to destroy a member of their association, for the violation of a self-imposed obligation, it can be no less a crime for the State to *murder* one of its own citizens, however criminal, as a punishment for the violation of one of its laws.

As the right to punish crimes is founded upon the necessity of defending the public liberty, and is coëx-tensive only with that necessity, how palpably absurd to suppose that any people have entered into a compact, giving unlimited powers to its government, for any and all possible purposes! And yet, there is

scarcely a government under heaven that is willing to admit any limit to its prerogative.

Touching this question of the right of the State to take life, Senator Sumner's letter will be found interesting:

BOSTON, 18th Sept., 1860.

MY DEAR SIR: — My opinions on the subject of capital punishment have been often declared, and are in print. The right to take life stands simply on the overruling necessity of self-defense, the State as in the individual man; for no combination of men can have higher rights in this respect than the individual. If the individual man can defend himself without taking life, he is bound to do so; and this is the limitation imposed by natural law and reason upon the State. Now, nothing is clearer than that, whatever may have been the exigencies of other days, the time has gone by when the life of a State can be saved only by taking life. Every execution now seems like a confession of weakness, if not of cowardice.

It belongs to a true civilization to settle this question on grounds of humanity and justice, mindful that every example of violence, even by the State, is injurious to public morals. But in removing capital punishment, we must be careful to establish other punishments which shall be enforced to the end, with all the benign austerity of justice; so that the criminal, though spared for repentance and reformation, may not be let loose upon the community.

I am glad that you are attacking the gallows, another relic of barbarism.

Faithfully yours,

CHARLES SUMNER.

MARVIN H. BOVEE, Esq.

There remains one ground on which this right is sometimes placed,— the right of self-defense. But this gives society no authority to put to death him who may have committed murder; and in no other case than murder would the argument be applicable. You can not defend the victim of the crime, for he is beyond the power of defense. To hang the criminal because you have reason to suspect he might repeat his crime under similar circumstances, would be to punish, not a crime, nor even the intention to commit it, but a possible liability to yield to a future temptation which may never assail him.

It can not, then, be argued that the execution of the murderer is necessary to the defense of society; for the maniac, who may be far more dangerous to life than the ordinary murderer, is placed within the walls of an asylum, for the protection of society, as well as for the cure which its sanitary measures afford. Hence, as we do not hang the maniac, some feeling must actuate us other than self-defense, when we consign the murderer to the gallows.

Whatever may have been the exigencies of other days, they furnish no safe rule for our present guidance. In pastoral times, when people dwelt in tents and led nomadic lives, there might have been some possible excuse for the destruction of the criminal in order to protect society against repeated offenses; but in our day and generation, when civilization has prepared the way for a higher mental and moral condition; when all the necessary restraints upon

criminal action are within our keeping; when prisons, reformatories and asylums, are coëxistent with every government, the absurdity of hanging the criminal as a protection to society, must seem obvious to every thinking mind.

The following letter from Dr. Dods, the well-known lecturer and philosopher, has a bearing upon the point under discussion :

BROOKLYN, N. Y., *January 2nd, 1868.*

HON. M. H. BOVEE:—*My dear Sir:*—Many years of intimate acquaintance with yourself has enabled me to know your philanthropic disposition, added to indomitable perseverance in the cause of human reform; and I am glad to know that you are about preparing a work against the barbarous institution of capital punishment. I have no doubt your work will find its tens of thousands of readers, in this country and in England, if not in other parts of Europe.

I do not believe that capital punishment is essential to the security or well-being of society. I believe that its total abolition would not be followed by an increase of those crimes which it is intended to prevent, but the reverse. Both experience and observation prove that those subjects and citizens are the most disobedient and cruel, who are governed by the most severe and cruel laws; on the same well-known principle that those children grow up the most disobedient, profane, and cruel, who are brought up by severe, profane and cruel parents. We are the creatures of circumstances, and receive our impressions from those with whom we associate.

Have governments the right to take human life? They

have not ; and for the same reason that no man has the right to take his *own* life. All righteous governments derive their powers from the persons governed : as none possess the *inherent* right to take away their own lives, so they can not delegate such rights to others. How can they delegate to others what they do not themselves possess ? They can not. Hence, legislators have no right to enact laws to take away human life.

If an individual, armed with a deadly weapon, attack me with an intention to kill, and has me in a position where I can not escape, then I have the right to take his life in self-defense ; and the public will justify the deed, and the law will acquit me. But, should I succeed in getting such an individual in my power, and binding him hand and foot, then I have no right to take his life. If I did so, then I would be considered a murderer, and, by law, would be tried, condemned and punished. Now, it so happens that the murderer is first in the hands of the government, and secured in prison, awaiting trial. Being in their power, are not rulers bound to obey and respect their own laws ? Certainly. What right, then, have they to deliberately condemn and hang this man ? Is it not judicial murder ? Why condemn me for a similar act, but justify themselves ? So well convinced have the Christian community become, that man has not the right to inflict the death penalty by human authority, that they now, with one consent, resort to the Bible to justify it as the command of God. Moses says : "Thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe." (Exodus, ch. xxi., 23, 24, 25.) But Christ says : "Ye have heard that it hath been said by

them of old, An eye for an eye, a tooth for a tooth ; but I say unto you, that ye resist not evil." Here he quotes part of the same passage above noticed, in which the death penalty is involved, condemns it as evil, and abolishes this doctrine of retaliation. Hence, it will not bear the test of scrutiny ; it crumbles at the touch of reality, in the face of the doctrine that Christ taught us to practice, that we might be the children of our Father which is in heaven. God practices his own precepts. When Cain slew Abel, He did not require the blood of Cain as an expiation, but declared that whosoever slew Cain, vengeance should be taken on him seven-fold. Hence, let our legislators cease making laws to take human life, lest the threatened seven-fold vengeance be ultimately inflicted on them.

Faithfully yours,

J. BOVEE DODS.

Blackstone may be classed among the very first of jurists, and yet he denies the right of the state to take life. He says: "To shed the blood of our fellow-creature, is a matter that requires the greatest deliberation, and the fullest conviction of our own authority ; for life is the immediate gift of God to man, which neither can he resign, *nor can it be taken from him, unless by the command or permission of Him who gave it.*"

Dr. Benjamin Rush, the celebrated American scholar, author and philosopher, speaks forcibly on this point: "The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, are in rebellion against this prerogative,

when they transmit it to human hands. I have said nothing of the punishment of death for murder, because I consider it an improper punishment for any offense."

This view of the question was warmly supported by John Quincy Adams, the "old man eloquent," who, in his vast accumulation of facts, in thorough research and general knowledge, had scarcely a peer amongst the men of his day, either in this or any other country. "I heartily wish and pray," says he, "for the success of your efforts to promote the abolition of capital punishment; and if you can shape the laws of the land to a disclaimer of the *right of Government itself to take from any human being the life granted him by his Creator*, I would welcome it as the harbinger of a brighter day, when no individual of the race of man shall ever lose his life by the act of another."

Father Matthew adds his testimony on this point. He says: "I have been about thirty years in the ministry, and I have never yet discovered that the founder of Christianity has delegated to man any right to take away the life of his fellow-man."

Dr. Benjamin Franklin, a name dear to every American, was an inveterate opponent of the gallows. He says: "Laws which inflict death for murder are, in my opinion, as unchristian as those which justify or tolerate revenge."

Lord Brougham, while Lord Chancellor of Great Britain, did not omit the opportunity to question

the right of government as to the exercise of this prerogative. As head of the law, before the peers of England, he said: “We have no right to shed a criminal’s blood because he has shed the blood of another man. *We have no right in reason to do this; we have no warrant from religion.* It is, doubtless, a great evil for a man to be murdered; but that, in reason, is no argument for inflicting death upon the murderer.”

Said Dr. Hooper: “We can not be too cautious, in depriving our fellow-creatures of that which God alone can give, and which, it seems to me, He alone has the right to take away.”

Governor Daniel D. Tompkins, of New York, in 1812, expressed his doubts on this very point. He said: “I have always entertained serious doubts whether society has the right to take away life, in any case. It is the vestige of barbarism.”

Rev. Henry Christmas, A.M., F.R., (Episcopalian) gives us the result of his investigations: “When I first approached the subject, I felt perfectly persuaded that the punishment of death, inflicted by the civil magistrate, was not only of Divine appointment, but of universal obligation. It has been gradually and slowly that this persuasion has been changed. That it is an error, I have no longer any doubt.”

Mrs. Elizabeth Fry supported the same view of the question, explicitly denying the right of a government to take life: “Is it for man to take the

prerogative of the Almighty into his own hands? Assuredly, it is not; and perilous indeed is the position of the person who presumes to do so." Such was the opinion of this excellent Christian woman.

The denial of the right of government to take human life, by statutory enactment, seems to be well sustained by the authority of some of the ablest minds of modern times, and most fully accords with the teachings of reason and religion, as drawn from the Gospel of the New Testament.

But the question will now be asked: "Has man the right to take life in absolute self-defense? Has he the right to kill his assailant, that, by so doing, he may preserve his own life? This interrogatory will be answered in the affirmative by *ninety-nine* out of every one hundred individuals; and it must be confessed that it is one of the most perplexing problems which we are called upon to solve. It is, of all other questions, the most difficult of analysis, and, at the same time, the most susceptible of misconstruction. The instinct of self-preservation is above and beyond all moral or religious considerations; for when life is in jeopardy, caution, operating through fear, drives from the mind all thought except that which imperatively demands the preservation of self; and the question hardly comes within the scope of those voluntary operations of the mind, which are usually guided by deliberate and thoughtful action. Hence, the question as to how others should defend themselves, or whether

they possess the right to destroy human life for the purpose of preserving their own, is, indeed, a problem which we can not solve for others, but *can* elucidate for ourself.

On this point, then, we can truly say that, while others may claim the *right*, we *hope* never to commit the *wrong*, of taking the life of an assailant, as a necessary measure of self-preservation; and this conclusion has been reached through a system of reasoning in which selfishness may be an important constituent; for we most sincerely believe, that during any given period of time, a greater number of persons lose their lives in *forcibly* attempting to defend themselves, than would be lost during the same period, had no *forcible* defense been made. As war *lives* upon *resistance*, so is an *assault* sometimes most successful where defense is the most *strenuous*. The individual who carries weapons of *defense*, intending to use them *only* as such, is very apt, in moments of excitement, to convert them into weapons of *assault*. The mere fact of carrying deadly weapons, may be considered evidence of *physical courage*, but, more likely, indubitable proof of *moral cowardice*; for it implies an utter lack of faith in the honor and integrity of mankind, and inculcates the detestable principle that all men should be treated as rascals until they prove themselves honest men, rather than the better maxim that all men should be regarded in the light of honesty until they are proven knaves.

The individual who places weapons of defense upon his own person, is not probably aware that it has a tendency to stimulate the passions of anger, hatred and revenge, and ministers to the cowardly and destructive elements of his own nature. Thus armed, he apprehends danger in the very air. The stirring of a leaf in the evening breeze arrests his attention ; his fears become unduly magnified at any unusual sound ; and should a friend, coming upon him unperceived, suddenly and familiarly place a hand upon his shoulder, the *intent* to defend would possibly terminate in a murderous *assault*. Instances are of frequent occurrence, where innocent parties, through mistaken identity, suffer death at the hands of men whose zeal to resent an insult had so blinded their vision, as to clothe the friend in the garb of the enemy whom they desired to punish. There is scarcely a week passes away, in which we do not learn of disastrous and oftentimes fatal consequences resulting from the pernicious habit of carrying weapons of defense, and which unpleasant results might have been wholly avoided, if men would abjure this popular but cowardly practice.

While others may regard *physical* non-resistance as the chimera of a sickly brain, we regard it as one of the very strongest measures of self-defense ; for it will often secure immunity from violence and death, where *forcible* resistance would invite the one and insure the other. Non-resistance is not cowardice, but is the mute appeal to the magnanimity of an

enemy, who usually scorns to attack a defenseless person. To illustrate: Supposing two individuals, each in possession of a sum of money which it would be desirable to retain, are traveling together upon a lonely road; the one individual, "armed to the teeth," gives all persons to understand that he is not only able, but willing, to defend himself and his property "to the very death;" the other, a true Quaker, even to the broad-brimmed hat and the *drab* apparel. Reaching an unfrequented spot on the road, they are assailed by highwaymen, pistols in hand, who demand the money or the lives of the travelers. The one, possessing weapons of defense, "draws" to strike down his assailant; but the keen, watchful eye of the robber has scanned the very movement for which he was looking and for which he is prepared, and, without hesitation, sends the bullet through the heart or brain of the *resisting* traveler. The non-resistant Quaker, whose very apparel betokens his peculiar views on the question of "defense," stretching forth his open hand, says, "Take me! I make no defense!" Now, in all frankness, we ask the reader, which of the travelers has made the stronger defense? Which individual, in nine cases out of ten, would escape with life? The conclusion is irresistible, that the Quaker would be the man. "But," says the objector, "I would defend my property with my life." Say you so? This, however, is a mere question of *taste*. When the soul of man has reached that point in human *avarice*

that it values money above life, it is extremely probable that the same possessor of money and soul, would defend the one at the risk of the other, as did the *resistant* traveler, and with a fair chance of a similar result.

In conclusion, we frankly declare that, should a *perverted* taste ever induce us to place so high a valuation upon property that it shall require of us the exercise of our worst passions for its defense, and, with the enjoyment of its uses, becomes mingled a constant apprehension of its loss, we pray a kind Providence to take *us* from our money, or our *money* from us; for it can no longer be of value to us, nor we of service to the "children of men." "But would you not carry weapons of defense when traveling through a savage country?" No; any individual would be *quite as safe without*, as *with*, weapons of defense, amongst any savage tribes that were ignorant of the *vices* of the whites; and when the enjoyment of such a journey must be marred by the constant apprehensions of violence and bloodshed, it would look too much like the pursuit of happiness under great difficulties; and, in this case, distance would, undoubtedly, "lend enchantment to the view."

As, in our childhood's days, no hateful memories of *murdered* birds or slaughtered animals disturbed our youthful dreams, so do we expect, in all future years, that no phantom of the human family will ever rise to reproach us with cruelty to our race. Is

it not better, then, that we all should strive to fill the measure of our years with good and noble deeds; that in the later periods of our lives, remembrances of kind and generous acts toward our fellow-men will prove a constant delight to the soul, giving assurance that life, instead of a curse, has proved a blessing,—instead of a failure, a grand and glorious success.





CHAPTER IV.

SACREDNESS OF HUMAN LIFE.

“A deep reverence for human life is worth more than a thousand executions, in the prevention of murder, and is, in fact, the great security for human life.”

JOHN BRIGHT.

THE *inviolability* of human life is one of the very first lessons which should be taught the youthful mind. The *sacredness* of life should be the grand idea which all should labor to impress upon the understanding of men. Human life should be invested with a reverence as sacred and as lasting as eternal truth. No fitful passion should lead us from the constant upholding of the sublime idea that “man is made in the image of God,” and that, under no circumstances which may arise, must that image be marred by the hand of *violence*. The commandment, “*Thou shalt not kill*,” though delivered amid the thunders and lightnings of Sinai, thousands of years ago, is written freshly upon every heart, by the same Divine hand, and binds, with the same sacred power, both citizen and ruler. No system of reasoning, however specious or plausible, should ever induce men to depart

from a broad principle, to stand upon a special instance. If human life is sacred to-day, it is, to-morrow. If it be sacred in the palace, it is, in the cot. If worthy of preservation in the "saint," equally so in the "sinner;" for all are the children of one common Father, and "God is no respecter of persons."

But how difficult to secure the universal observance of this grand principle, when government itself is furnishing constant proof that it will not practice the precept, "Thou shalt not kill," which it so solemnly enjoins upon others. The child may be early taught to cherish a reverence for human life; may be shown that murder is a wicked deed, and its reverence for life, though shocked by the crime, still remains unshaken; — but when government undertakes to perpetrate a similar crime under the plea of public necessity, and under the sanction of the law, and the shield of *theology* (for we will not insult *religion* by the accusation), then, how difficult to impress the youthful mind with the *justness* of the monstrous absurdity, that what is condemned as a crime in the individual man, should be regarded as a virtue when perpetrated by the state. This inconsistency in government has the direct tendency to undermine the child's faith in human wisdom, and lessens, if it do not destroy, its respect for human life.

Government is an *educator*. Under the restriction of wholesome laws, and under the guidance of wise

and benevolent men, its beneficent influence is felt in every fibre of the body politic; but in the hands of unprincipled and wicked rulers, it becomes an engine of oppression to the people,—its wrongs permeating every vein of society. Whenever or wherever, in the broad earth, government has manifested a tender care for human life, a scrupulous regard for the rights and liberties of the people, in a spirit of imitation, will the people be found exercising the same characteristics observable in government; and in benevolent, kindly action, one to another, thus testify their appreciation of the conduct of the great public exemplar. It is said that “a government is like its people.” True; but far more likely, a people like unto its government. *Individual* examples of goodness and greatness must be marked and conspicuous indeed, to lastingly and favorably impress a people; but government, in the estimation of the people, being always *great*, its influence, for good or for evil, is necessarily marked and decided.

Government being the nucleus around which are supposed to cluster the elements of wisdom, justice, patriotism and virtue, how natural, then, that a people should regard its government as the essence of all good; consequently, the greatest of all public exemplars. In support of this idea, we are supposed to send to our legislatures, and to elect to our highest public positions, our purest and wisest men. Upon this hypothesis, we act; and upon it, *too often*

fail. So long as governments are presumed to be the condensation of all good to be found in history or experience, just so long will the people have an abiding faith in the justice of those governments. Government, then, being an educator of the people, we are apt to suppose that whatever government may do, there exists a necessity for doing; hence, as an almost invariable rule, the people become imbued with the spirit of the government under which they live, and are quite certain to defend its action and general policy.

Public teachers may inculcate a deep reverence for human life; but government, while insisting upon destroying life, as a punishment for crime, is neutralizing the moral effect of this wholesome precept. "Like begets like." The father who cruelly punishes his sons, by bruising and beating them, for a dereliction of duty, need not be surprised to find the "home treatment" transferred to their comrades and schoolmates upon the street, by the very sons whom the parent is endeavoring to whip into decency at home. The father, again, who rules his own temper before attempting to rule his household; in governing his sons by reasonable restraints based upon the law of love and kindness, will find the same feeling which regulates his action imbibed by his own children, who will be found ever ready to bestow kindly action upon others. Experienced school-teachers can almost invariably determine the character of the parents whom he has

not seen, by the deportment of the children whom he daily sees. Those scholars who seem to need the restraints of the rod at school, are undoubtedly subject to the same restraint at home; those, on the contrary, whom the teacher governs by the kind word, have given public manifestation of the nature of the discipline to which they are subject at home. If, then, we desire to impress the youthful mind with the absolute sacredness of human life, how shall we succeed without the moral influence of the government under which we live? How are we to convince our children that murder is a *crime* in the individual, when the state, by *judicial* practice, declares it a *virtuous act* in the government?

On this point, said a good and true man—one who lived his humanity in every act of his life: * “We sincerely believe that the only doctrine which will ever secure to man his just rights, will be that of the inviolability of human life. We must begin here. When this is once felt and understood, we may expect an end to tyranny and oppression throughout the world. Life is sacred. It belongs to Him who gave it. It is in the hands of its author. The voice of God has sent forth His perpetual and universal mandate, ‘Thou shalt not kill.’ That strange union of spirit and body which composes this fearful and unfathomable mystery of our humanity, is not to be severed, either by the hand of

* Rev. Charles Spear.

human government, or by the hand of the individual; ‘*for in the image of God, made He man.*’”

M. Lucas, in dwelling upon the sacredness of human life, pointedly says: “The best means of recalling to the guilty culprit the sense of the sacred character of the duty he has violated, is it not to respect it in his own person? When he shall behold the society abstaining from putting him to death—him, the murderer—he will then comprehend that man is, indeed, forbidden to attack the life of his fellow-man; and then alone will he conceive the thought of all the sanctity of the duty he has violated—all the enormity of the crime he has committed.”

Said Mr. Rantoul, on this point: * “Let the idea of crime, horrible crime, be indissolubly and universally associated with the voluntary and deliberate destruction of life, under whatever pretext. Whoever strengthens this association in the public mind, does more to prevent murders than any punishment, with whatever aggravation of torture, can effect through fear. The denomination of Friends have always been educated in this idea; and among them murders are unknown. The strongest safeguard of life is its sanctity; and this sentiment every execution diminishes.”

It would seem scarcely necessary to adduce any testimony on a point so clearly discernible to every dispassionate mind. If the law will but respect

* Report to the Massachusetts Legislature, 1836.

human life, by discarding the principle—or, rather, the passion—of vengeance, as illustrated in the infliction of the death penalty, the sacredness of life will find a sure and permanent basis in the hearts of the people.

A distinguished French writer presents the following aspect of the question: “The law should always present to the people the most perfect model of justice and reason. If, in place of that powerful severity, of that calm moderation, which ought to characterize them, they substitute anger and vengeance; if they cause to flow human blood which they might spare, and which they have not the right to shed; if they display, before the eyes of the people, scenes of cruelty, and corpses murdered by tortures, they then corrupt, in the heart of the citizen, the ideas of the just and the unjust; they cause to spring up, in the bosom of society, ferocious prejudices, which, in their turn, reproduce others. Man is no longer to man an object so sacred. A less lofty idea is entertained of his dignity, when the public authority treats so lightly his life. The idea of murder inspires much less dread than before, when society itself presents the example and exhibition of it. The horror of the crime is diminished, when society punishes it only by another. Beware well of confounding the efficaciousness of punishment with the excess of severity; the one is absolutely opposed to the other. Every thing seconds

moderate laws; every thing conspires against cruel ones."

Touching the sacredness of human life, the following brief but excellent letter, from Hon. Fernando Wood, will be of interest:

HOUSE OF REPRESENTATIVES, }
WASHINGTON, D. C., *Feb. 12, 1868.* }

DEAR SIR:—In reply to yours, 3rd inst., I beg to assure you that I do not consider capital punishment necessary to the well-being and security of society. After many years of observation in the city of New York, I am confident that capital punishment, so far from deterring persons from the commission of the crime of murder, has the opposite effect. I could give many reasons for this opinion, but it is only sufficient to state the fact that that dreadful offense has increased where capital punishment is most general.

The abolition of capital punishment could have no other than a salutary effect. Life would become more sacred, and hence more secure. When society itself sets the example of treating human life as a thing to be taken lightly, men become familiar with its little value. Following this example, they often take it from others without compunction.

In my judgment, neither the law nor the individual has the right to take human life. It is a sacred creation of the Almighty, not to be extinguished by force or violence.

Very truly yours,

FERNANDO WOOD.

HON. M. H. BOVEE.

Dr. Benjamin Rush speaks in fitting terms of this sacred reverence for human life, which manifests itself amongst the more moral class of people, on those occasions when “vengeful government” is in pursuit of a victim: “For the honor of humanity, it can be said that, in every age and country, there have been found persons in whom uncorrupted nature has triumphed over custom and law. Else, why do we hear of houses being abandoned near to places of public execution? Why do we see doors and windows shut, the days and hours of criminal executions? Why do we hear of aid being secretly afforded to criminals, to mitigate or elude the severity of their punishments? Why is the public executioner of the law a subject of such general detestation? These things are latent struggles of reason—or, rather, the secret voice of God himself, speaking in the human heart, against the folly and cruelty of public punishments.*

And it is one of the “encouraging signs of the times,” in connection with this subject, that there exists, at the present time, an increasing solicitude for the welfare of mankind; a more tender regard for human life. In the middle ages of the world, there seemed to be no public acknowledgment of the fact that mankind were suffering from physical infirmities or mental maladies, and measures for the relief of the distressed were left, almost wholly, in private hands. In our present civilization, govern-

* Rush’s Essays, Literary, Moral and Philosophical, p. 162.

ments not only take cognizance of human infirmities, but by large and liberal expenditures of money, establish asylums for the blind, institutions for the deaf, hospitals for the insane, reformatories for the inebriate, and, by other important public adjuncts for the alleviation of human misery, bear unmistakable testimony to the increasing valuation and growing reverence for human life. Life *once* hinged upon the will of the monarch — a mere foot-ball for kings. It is *now* coming to be regarded with peculiar reverence. Its unnecessary sacrifice, in a single instance, insures prompt public condemnation; and it is only because *war* and the *gallows* are predicated upon public necessity, that they are barely tolerated in our day and generation. Remove the *apparent* necessity for these cruelties, and both will be consigned to the grave of oblivion amid the public exultation of the people.

If government ever expects to restrain men from killing one another, it must first repress its own vengeful action, by refusing to punish crime by imitating it; for it seems to us that government is guilty of a wicked, a stupid blunder, when it undertakes to *illustrate* the sacredness of human life, by *murdering* the criminal. As well undertake to illustrate the value of property, by burning every thing combustible.

We take pleasure, in this connection, in presenting a letter from one of England's greatest states-

men; an opinion which that distinguished reformer has kindly sent us for insertion in this volume:

ROCHDALE, *January 3, 1868.*

DEAR SIR:— I do not think the punishment of death is necessary to the security and well-being of society, and I believe its total abolition would not tend to increase crimes which it is now supposed by many persons to prevent. The security and well-being of society do not depend on the severity of punishments. Barbarism in the law promotes barbarism among those subject to the law; and acts of cruelty under the law, become examples of similar acts done contrary to the law.

The real security for human life is to be found in a reverence for it. If the law regarded it as inviolable, then the people would begin also so to regard it. A deep reverence for human life is worth more than a thousand executions, in the prevention of murder; and is, in fact, the great security for human life. The law of capital punishment, whilst pretending to support this reverence, does, in fact, tend to destroy it.

If the death penalty is of any force, in any case, to deter from crime, it is of much more force in lessening our chief security against it; for it proclaims the fact that kings, parliament, judges, and juries, may determine when and how men may be put to death by violence; and familiarity with this idea can not strengthen the reverence for human life.

To put men to death for crimes, civil or political, is to give proof of weakness rather than strength, and of barbarism rather than Christian civilization.

If the United States could get rid of the gallows, it would not stand long here. One by one, we "Americanize" our institutions; and I hope, in all that is good, we may not be unwilling to follow you.

I am, very truly yours,

JOHN BRIGHT.

M. H. BOVEE, *Eagle, Waukesha Co., Wisconsin.*

The above letter from Mr. Bright, states, concisely, the irrefutable principle that cruelty in the government engenders and begets cruelty in the people; that beneficence in the law encourages and promotes benevolence amongst those subject to the law.

Government, then, being the great public exemplar of the people, its action should be ever guided by wisdom, justice and moderation. Its blessings should not be confined to the rich, nor its burdens imposed upon the poor; but, in the spirit of justice, should fall alike upon both high and low. Its penalties for the infraction of law, should not fall too heavily upon the weak, nor too lightly upon the powerful and strong; but, administered in the nature of correctives, should find entrance to the palace as well as to the cot. *Too much* of government disturbs the repose of any people. Its powers should be both negative and restrictive — neither positive nor

aggressive. It should exercise its functions, not in turbulence and passion, like the mountain torrent which injures and destroys by the vehemence of its power; but like the placid stream, which imparts health and vigor in its calm, still flow, yielding an influence, silent, peaceful, blessed.





CHAPTER V.

THE IRREMEDIABLE LAW.

“I shall ask for the abolition of capital punishment until I have the infallibility of human judgment demonstrated to me.” — LAFAYETTE.

CE now approach that portion of the subject in which we hope to furnish abundant and sufficient reasons for the unconditional abrogation of the punishment of death. Among the very many grave objections to the further continuance of this dreadful penalty, its irremediability stands chief and foremost. That innocent persons have frequently suffered the extreme penalty of this law, is a matter of record. That this, of itself, should call for its immediate repeal, would seem clear to every reflective mind; for life, once taken away, can never be restored. To urge, in justification of its retention, that innocent persons suffer wrongful accusation and unmerited punishment for other offenses than capital ones, does not, in the slightest degree, lessen the force of the objection against this barbarous and irremediable law; for fines may be unjustly imposed, and due

restitution made upon the discovery of innocence,—liberty may be taken away, afterwards restored, and reparation made,—but no legislative enactment nor executive decree can rekindle the lamp of life when it has once been extinguished.

“To err is human;” and for poor, weak, and fallible man, to sit in judgment on the consciences of his fellow-creatures, and, in the strength of his prejudices or the weakness of his intellect, undertake to determine the exact nature of his guilt, and to deal out punishments according to the supposed turpitude of the crime, constitutes some of those remarkable assumptions of power which have been conceived in tyranny and brought forth in wickedness. *Omniscience only* can accurately determine the weight of guilt; omnipotence *alone* possesses the right to destroy the *living* temple which He has created; and when man assumes either attribute, in imitation of Deity, he is guilty of most wicked usurpation.

When we consider the important facts that human testimony is unreliable,—that the human understanding may be swerved by interest, passion, or prejudice,—that weak nature may be corrupted,—that wicked men may forswear themselves,—that the really guilty will oftentimes accuse the innocent, and labor for their conviction, to thus secure immunity for themselves,—that even well-disposed persons may unconsciously incline to the wrong, under pressure of public opinion,—that the upright may be mistaken,—and that proof, seemingly as “strong

as Holy Writ," may ensnare the victim,— how presumptuous in men to sustain a penalty so irremediable as death, and this when its infliction is visited upon the innocent as well as the guilty. Says one writer :

" The fallibility of human tribunals has long been recognized, in every land, and in all times, even in civil matters. The 'glorious uncertainty of the law,' is a phrase familiar as a household word to every one, from prince to peasant. This uncertainty arises, in a great measure, from the difficulty of arriving at the facts of the case, as they really are, without coloring and without distortion. Memory is frail ; minor events are often forgotten, while those of more importance remain fresh in the memory ; the witness may detail these with perfect accuracy — yet they will lose their significance, will cease to be truth, when divested of these minor accessories, because, from these, men's motives can be best detected. Witnesses, too, are liable to mistakes; or illusions of vision and of hearing, which of course must tend to diminish the value of testimony, even where there is a sincere desire to tell the truth ; but too often this rectitude of intention is unfortunately wanting. Personal and party interests are to be promoted ; revenge is to be gratified ; and a thousand motives, even in civil cases, are brought into action to prevent the witness from telling 'the truth, the whole truth, and nothing but the truth.'

" In criminal trials, many other causes beside those above enumerated, conspire to prevent the discovery of truth. A murder has been committed ; the town rings with the awful tidings ; it passes from mouth to mouth ; men hurry along with palpitating hearts and agitated looks ; the knife of the assassin has entered the bosom of one known and warmly loved ; there lies the ghastly remains — here, the pool of clotted blood ; yonder are the bloody tracks of the murderer. The wild unearthly shrieks of the bereaved ones swell the tumult that already

agitates men's bosoms, and then comes the strong instinctive impulse to catch the murderer, and vindicate the insulted majesty of the law.

"A poor, homeless, and perhaps drunken outcast, is found sleeping in a barn. His clothes are examined; a few spots of blood are found on them—made, perhaps, by the decapitation of a chicken, which he has stolen from the roost, to satisfy hunger. He is seized. Every one breathes more freely, since justice is to have a victim, and a dangerous assassin is restrained from preying on society. Brought before the examining court, some recollect of having seen him looking at the house suspiciously, some days before;—perhaps he was luxuriating on the *smell* of dinner in the kitchen, which his finances prevented him from tasting. Another saw him in the vicinity, a few hours before the murder was committed; another saw him, perhaps, whittling with a jack-knife, which would make a wound just about the size of that inflicted on the victim. This is quite enough; he is committed for trial.

"The trial comes on. Learned and acute lawyers are arrayed against him; they are sustained and urged onward to procure his conviction. Each witness feels that his duty requires of him to make as strong a case as he can; and, fully convinced of the guilt of the accused, he states what he knows, in as vivid colors as he can. The real murderer knows that nothing will contribute more to his safety than the conviction of some other person; and he is busy in procuring witnesses—and, if it is necessary, will testify himself. All these little circumstances, strongly stated and vividly colored, though small in themselves, form, when taken together, a tissue of facts which are sufficient to procure his conviction."

Such is a fair specimen of a vast number of cases which have claimed public attention; and it is the opinion of many able and candid writers, that, of the

number of persons executed, taking one year with another, a very large number are entirely innocent of the crime for which they have suffered this horrible penalty.

We may mention a few of the many cases which have fallen under our notice :

In May, 1834, Charles Boyington was accused of the murder of Nathaniel Frost, in the city of Mobile. Boyington and Frost boarded in the same house; the former was in great pecuniary distress, and the latter was known to have money with him. They walked out together after dinner; Frost was never seen again, until his body was found in a grave-yard near the city. It was proved that Boyington and Frost had made an agreement in the morning, to go to a field near the grave-yard, after dinner, for the purpose of picking berries. The same afternoon, Boyington decamped, and was taken on board a steamboat, brought back, tried, and sentenced.

The following account of his execution is given by an eye-witness: "When brought upon the platform, from which he was soon to be launched into eternity, he began to read his address, and continued to read, until warned by the sheriff that his hour approached. Still he read. At the last moment, he was informed that the work of death must proceed. The self-possession which, till that time, seemed to declare that he was indifferent to his fate, forsook him. As the sheriff commenced the awful preparation, the countenance lately beaming with intelli-

gence and youth, became a mirror of the dreadful storm of wild passions raging within his bosom. Hope fled despairing from his face, and left it cold and death-like. In convulsive agony, he springs from the gallows into the midst of the astonished crowd, and in a voice startling as the mariner's shriek, as he sinks into the stormy sea, cries, '*Mercy!*' '*Mercy!*' The officers seize him quick, struggling with the death-like grasp they bear him back,— the fatal cord is attached,— a few agonizing contortions for life, and he is gone. Oh, God of nature! was it ever designed by Thee that the peace of society should be built upon such a ruin as this?"*

After this horrid scene had been enacted, it was clearly proved that Boyington was entirely innocent, and the suspicious circumstances were fully explained.

'Tis but a few years since Margaret Houghtailing was executed in the county of Columbia, State of New York, for the murder of a child; the circumstances being so strong against her, that there were no doubts in the minds of the people of her guilt, although she strongly asserted her innocence to the last. Fifteen years afterwards, a poor, miserable woman lay sick in a wretched hovel. Finding her last hour approaching, she sent for a clergyman, and confessed to him, with her latest breath, that she was the murderer of the child, and described the

* Argument of B. F. Porter before the House of Representatives in Alabama, on abolishing capital punishment.

means she made use of to throw suspicion on Margaret Houghtailing.

The case of Dr. Hamilton, of Kentucky, is strongly illustrative of the fallibility of human tribunals. Dr. Sanderson was found murdered, in a cross-road, with Dr. Hamilton's pistols lying by him. The latter, of course, was arrested and tried; he was convicted, and afterwards executed. In three months afterwards, two robbers confessed, on the gallows, that they first stole Dr. Hamilton's pistols, and then committed the deed.

“Two men have been found fighting in a field, old enemies; one is killed by a pitch-fork known to belong to the other, and, *too late*, this other has been found innocent,—the true murderer sitting on the jury that tried him.”

It is related by Dymond, in his Essays on the Principles of Morality, that, at one assizes, he believes that no less than six innocent persons were hanged.

The following instance of rape and murder is given by Dr. Smollet. It goes far to sustain the view that public executions have no good effect upon spectators; for, in this instance, the real criminals assisted at the execution:

“The victim of the outrage and murder was an unfortunate woman in the neighborhood of London. The real criminals assisted at the execution, and heard the innocent man (who had been charged with and convicted for the murder) appeal to heaven, while they, in the char-

acter of friends, embraced him as he stood on the brink of eternity.” *

Several years ago, a man residing about seventy miles from Cincinnati, died from the effects of poison; and suspicion resting on a near neighbor and acquaintance, he was arrested and brought to trial. The wife of the deceased made positive oath that the prisoner at the bar was at her house previous to the sickness of her husband, and administered the poison in a cup of coffee, as she had reason to believe. It was also proven that the prisoner purchased poison in Cincinnati, about that time, of the description found in the stomach of the deceased. Thus was conviction of the man’s guilt fixed in the minds of the jury. In his defense, the prisoner admitted that he had purchased the poison, but declared that he had purchased it for the woman who swore against him, and who said, when she sent for it, that she wanted to employ it to exterminate rats; that he gave it into her hand, on his return from Cincinnati, and was utterly ignorant of when or how it was administered to her husband. This story, however, availed nothing with the jury. The woman was a *religious* woman, and her story was entitled to credit. The man was accordingly convicted, sentenced, and hung; but he always protested his innocence, to the hour of his death. A few years passed, and the guilty woman confessed, not

* History of England, Vol. III., p. 318.

long before her death, that *she* was the guilty wretch, and declared that the state had executed an innocent man — one who was utterly ignorant of the circumstances of the murder.*

A few years since (Sept., 1855,) the people of Alexandria, La., were engaged in the work of strangling a little boy on the gallows, only ten years old. The New Orleans *Delta*, in giving an account of the affair, said :

“ On the day before he was called to face death, some gentlemen visited him, and propounded questions to him ; but his answers were and could be no other than childish. He was, I believe, only ten years old. The gentlemen told him the sheriff was to hang him the next morning, and asked him what he thought of it — whether he had made his peace with God, and why he did not pray? His answer was, ‘ I have been hung many a time.’ He was, at the time, amusing himself with some marbles he had in his cell. He was playing all the time in jail, never once thinking that death was soon to claim him as its victim. To show how a child’s mind ranges, when about to die, I will mention that when upon the scaffold he begged to be permitted to pray, which was granted ; and then he commenced to cry. Oh, what a horrible sight !”

But the most remarkable case on record, of strong circumstantial evidence against two innocent men, occurred in Vermont in 1813 ; and when we consider that one of the accused parties absolutely confessed the crime of which he was in no wise guilty, it stands without a parallel in criminal history, and should

* “ Quimby,” p. 72.

serve as a warning to judges and jurymen, of the fallibility of human testimony, and of the unreliability of confessions when made by individuals possessing susceptible mental organizations, or persons under psychological influence.

The account we give is abridged from the Life of the Rev. Samuel Haynes, A.M.; New York, 1837; pp. 216, 229:

“One Russell Colvin, who had been for some time insane, or in a state of mental incapacity, in Manchester, Vermont, left home on the 7th of May, 1813, and was not seen afterwards. Many surmised that he had been murdered; and many observations were made by Stephen and Jesse Boorn, which cast suspicion on them as the murderers, but nothing sufficiently definite was known to warrant proceedings against them. The matter was frequently talked of in the neighborhood; but, in 1820, a remarkable dream revived the whole matter, and invested it with peculiar interest. An uncle of the Boorns dreamed that Russell Colvin came to him at his bedside, and told him that he had been murdered, and he must follow him, and he would lead him to the spot where he was buried. This was repeated three times. The deposit was the place talked of, previous to the dream, which was where a house had formerly stood, under which was a hole about four feet square, which was made for the purpose of burying potatoes, and now filled up. This pit was opened, and nothing discovered but a large knife, a pen-knife, and a button. Mrs. Colvin, previous to their being presented to her, described them accurately; and, on seeing them, said they belonged to her husband, except the small knife.

“Another circumstance, which occurred soon after, also aroused the attention of the community. A lad was walking from Mr. Barna Boorn’s, at a small distance, with his dog, when a hollow stump, standing near the

path, engaged the notice of the spaniel, which ran to the place and back again several times, lifting up his feet on the boy, with whining notes, as though he would draw the attention of his little master to the place; and he finally succeeded in doing so. A cluster of bones was drawn from the roots of the stump, by the paws of the animal. Further examination was made, and in the cavity of the stump were found two toe-nails, to appearance belonging to a human foot. Others were discovered in a crumbled state, which apparently had passed through the fire. They were examined by a number of physicians who thought them human; others said the bones were not human, but that the toe-nails were. The bones were in a degree pulverized, but some pieces were in a tolerable state of preservation. Suspicions were excited that the body of Colvin had been burnt, some part not consumed cast into the stump, and other bones put among them for deception.

“ Some time after the disappearance of Colvin, a barn belonging to Barna Boorn was consumed by fire accidentally; it was conjectured that the body was taken up and concealed under the floor of the barn, and mostly consumed. About that time, the Boorns burned a log heap, near the place where the body was supposed to be deposited; it was thought that it was consumed there. These circumstances, together with evidence which was adduced, that, previous to Colvin’s disappearance, a quarrel had occurred between himself and the Boorns, induced the magistrate to apprehend them; for several days, nothing sufficiently definite appeared to warrant a committal; and the examining court was on the eve of dismissing the complaint, when, on Saturday, about ten o’clock, Jesse, with a trembling voice, observed that the first time he had an idea that his brother had murdered Colvin, was when he was here last winter. He then stated that he and Russell were hoeing in the Glazier lot, that there was a quarrel between them, and Russell Colvin attempted to run away; that he struck him with a club, or stone, on the back part of his neck or head, and

had fractured his skull, and supposed he was dead. He said he could not tell what had become of his body. Lewis, the son of Russell Colvin, testified that he saw his uncle Stephen knock down his father, was frightened, and ran home. Other evidence was introduced, and the prisoners were committed for trial.

“In due time, they were indicted; and, after a protracted trial, were found guilty, and sentenced to be hanged. It is impossible to describe the confusion and anguish into which the prisoners were cast, on hearing their doom. They requested, by their counsel, liberty to speak, and it was granted. In sighs and broken accents, they asserted their innocence. The convulsions of Stephen’s frame were so great, that he was unable to walk; and he was supported by others, and carried back to prison.

“The sentence of death was commuted, in the case of Jesse, to imprisonment for life; but Stephen was left for execution. His minister frequently visited him in his cell, and endeavored to turn his mind to things of another world — telling him that, as all other means failed, he must look to God as the only way of deliverance. He was, at times, calm; and again, impatient. One of the last interviews was very affecting. He said, ‘Mr. Haynes, I see no way but I must die; every thing works against me; but I am an innocent man. This you will know, after I am dead.’ He burst into a flood of tears, and said, ‘What will become of my poor wife and children? They are in needy circumstances; and I love them better than life itself!’ Mr. H. said, ‘God will take care of them.’ He replied, ‘I don’t want to die; I wish they would let me live some time longer, even in this situation; perhaps something will take place that may convince people that I am innocent.’

“As the clergyman was about to leave the cell, he said, ‘Will you pray with me?’ He arose, with his heavy chains on his hands and legs, being also chained down to the floor; and stood on his feet during prayer, with deep and bitter sighings.

“A few days after this, a man by the name of Chadwick wrote to the clergyman of Manchester, that he had seen the account of the trial of Boorns, and he believed the man who was alleged to have been murdered, was yet alive in the vicinity of his residence. This letter was carried to the jail, and read to Stephen. The news was so overwhelming, that, to use his own language, ‘nature could scarcely sustain the shock; but, as there was some doubt as to the truth of the report, it tended to prevent an immediate dissolution.’ He told the minister that he ‘believed that, had Colvin then made his appearance, it would have caused immediate death. Even now, a faintness was created, which was painful to be endured.’

“A special messenger was sent to ascertain the truth of the report. At length, the long-expected stage was seen approaching, and the cry was raised, ‘Colvin has come!’ The stage was driven swiftly, and a signal extended; it was all bustle and confusion. The stage stopped at the inn. The village was all alive; all were running to obtain a sight of the man who, they had no doubt, was dead, and had come as a kind of saviour to one who was devoted to the gallows. Some — like Thomas, in another case — would not believe without tangible evidence. Almost all his old acquaintances, he could recognize, and call them by name. Guns were discharged for joy; people ran to different parts of the town, to give notice. The prison door was unbolted — the news proclaimed to Stephen, that Colvin had come! The chains on his arms were taken off, while those on his legs remained. Being impatient for an interview with him who had come to bring salvation, they met.

“Colvin gazed upon the chains, and asked, ‘What are they for?’

“Stephen answered, ‘Because they say I murdered you.’

“Colvin replied, ‘You never hurt me.’

“The prisoners were released; and thus a most dreadful judicial murder was prevented.”

We could cite very, very many instances, where innocent men have been executed ; indeed, the number is legion. It is estimated that over ten thousand men and women have been executed in England, who have protested, to the very last, that they had no knowledge of the crimes for which they were about to suffer. In the United States, the number thus executed reaches nearly five hundred. It is true that the dying testimony of men is not always to be credited ; but it is reasonable to suppose that a very large number uttered the truth. As a great majority of the number had been converted to Christ, (if we may believe the words of the clergymen who attended them,) there is reason to believe that, in most instances, they had spoken the truth in declaring their innocence. If not, then but little faith can be placed in the modes of salvation as prescribed by popular theology.

The following extract, we take from the speech * made by O'Connell, many years since, before the London Society for the Diffusion of Information, on the subject of the Death Penalty. He refers to facts most touching, which had come under his own observation :

“He had long been deeply impressed,” he said, “with the conviction that capital punishment ought to be utterly abolished. He could not forget that ‘vengeance is mine,

* Originally published in the *Herald of Peace*, for 1832. We copy from Essays on the Death Penalty, by Charles Spear.

saith the Lord, and I will repay it.' Perhaps it was by the impulse of feeling, and what he conceived to be humanity, that, in the early part of his life, he was brought to this conviction; but long, and, he might venture to say, great experience in the criminal law — for no advocate, at least in his own country, had the miserable boast which he could make, of the frequency of his practice in that branch — that experience had confirmed him in his opinion that there should not be in man the power of extinguishing life, because the result was irreparable, because the injury could not be compensated which might be done, if the beings were not infallible who inflicted the punishment (and where should we find such?) and because, while we thought we were vindicating the law of society, we might be committing the greatest outrage that could be perpetrated upon our fellow-creatures. The honorable and learned gentlemen who spoke last, shuddered at the death of even a criminal; but what would his feelings have been, had he witnessed, as he had, the execution of the innocent!

"One of the first events which struck him, when he was rising into life, was seeing a gentleman who had forsaken society, and thrown himself into a mountain lodge, abandoning the intercourse of men, and wandering about like a troubled spirit, a willing outlaw, and an outcast from the social state. He inquired the cause, and learned that it originated in these circumstances: Two men got into his bed-room at night, and robbed him, but did not treat him with any brutality. He prosecuted two brothers for the crime; and they, being unprepared with any defense, from a consciousness of their innocence, were convicted and executed. Not a fortnight after they had been laid in the grave, in the presence of their father, and amidst the tears of their broken-hearted mother, the gentleman discovered his total mistake!

"Mr. O'Connell said he would mention another instance, of which he had a personal knowledge. He defended three brothers, who were indicted for murder;

and the judge, having a leaning, as was not unusual in such cases, to the side of the crown prosecution, almost compelled the jury to convict. He sat at his windows, as the men passed by, after receiving sentence. A military guard was placed over them, and it was positively forbidden that any one should have any intercourse with them. He saw their mother, strong in her affections, break through the guard, which was sufficient to resist any male force; he saw her clasp her eldest son, who was but twenty-two years of age; he saw her cling to her second son, who was but twenty; he saw her faint, as she clasped the neck of her youngest boy, who was but eighteen. And they were innocent, but were executed.

“ He mentioned these facts, to show with what extreme caution any one should do that which was irrevocable. When we recollect that, in criminal cases, a prisoner was almost shut out from making any defense, and that, in cases of circumstantial evidence, men were convicted, not upon facts, but upon reasonings and deductions; when we recollect that the criminal law permitted the counsel for the crown to aggravate the impression against the prisoner, and prohibited his counsel from opening his mouth in his defense; it might be said, without much exaggeration, that such a code was written in letters of blood. Was this England, the first country in the world for the love of liberty, and the encouragement of all the arts which adorn civilization and morality? Was this the country where, if a man has five pounds at stake, he might employ ten or twenty counsel to speak for him as long as they liked? but, when his life was in jeopardy, the law said, ‘ The counsel against you shall speak in aggravation of the charge, but the lips of your counsel shall be sealed?’ Up to the present moment, that horrible state of the law continued. He was firmly persuaded that if he had been entitled to speak in behalf of those three brothers — feeble as might be his advocacy, perhaps his heart would have aided his judgment, and given him an inspiration beyond the natural dullness of his

disposition — he felt that he would have made it impossible for any jury to convict. If the punishment of these three brothers had not been incapable of being recalled, they might have been restored to their family ; and the mother, who wept over their graves, might have been borne in decency to her tomb, by those over whose premature death she mourned.”

What compensation, we ask, could be given for such agony, and for such a sacrifice of human life, as that ? Such a lamentable mistake, if occurring but once in a hundred years, should be a sufficient reason for the repeal of the death punishment, and the substitution of a penalty less irremediable and less barbarous. How many similar instances have occurred, in which the innocence of the sufferers has never been revealed, is known only to the Great Searcher of all hearts.

The subjoined letter from Hon. Horace Greeley, will be read with great interest. No public journalist, in this or any other country, has given the gibbet heavier, sturdier, or more effective blows, than the editor of *The New York Tribune*. It will be seen that Mr. Greeley’s *second* objection to the gibbet, is based upon *human fallibility* :

CONSTITUTIONAL CONVENTION, }
ALBANY, N. Y., September 23rd, 1867. }

MY FRIEND : — My objections to Capital Punishment may be summed up in a few words. They are :

1. *I hate vengeance.* If I am ever revengeful, I hate myself for being so. Vengeance is a barbarous, cruel,

malignant passion, which I would not teach my children, nor *any* children. The gallows *does* teach it—always *did* teach it—always *will* teach it. The boy who runs to see a man hung, will be taught thereby to seek to injure every one he deems his enemy, or who he supposes has injured or wronged him. This is Paganism—possibly Judaism;—it is *not* Christianity, as I have learned that religion. I revere the cross, and detest the gallows.

2. *I dread human fallibility.* Men are prejudiced, passionate, and too often irrational. To-day they shout “Hosanna!” and to-morrow howl “Crucify him!” I would save them from the harsher consequences of their own frenzy. Our Saviour is by no means a solitary example of the unjust execution of the innocent and just. Socrates, Cicero, Sir Walter Raleigh, Algernon Sidney, John Huss, Michael Servetus, Louis XVI., the Duc d’Enghein, Marshal Ney, Riego, Nogy Soudor, Maximilian, are among the conspicuous instances of victims of the law of blood. We have recorded instances of innocent men convicted of murder on their own confession—of men, convicted, sentenced and hung, for offenses whereof they were no wise guilty. Men may suffer unjustly, even though death be stricken from the list of our legal penalties; but to be imprisoned and stripped of property, is quite endurable, compared with the infliction of an ignominious death, in the presence and for the delectation

of a howling mob of exulting human brutes. So long as man is liable to error, I would have him reserve the possibility of correcting his mistakes, and redressing the wrongs he is misled into perpetrating.

3. I would affirm and inculcate, as widely and impressively as possible, the *sanctity of human life*. Unlike the French wit, I would have society set its enemies a salutary example. I believe that legal executions incite to, rather than diminish, murders. Yours truly,

HORACE GREELEY.

M. H. BOVEE, Esq.

We know many good people who favor the punishment of death, *provided* always that the guilt of the party accused is assured beyond any question. But do not these same good people know that, however careful judges, juries, or witnesses may be, there is still left the possibility of a *mistake*? and when such a mistake is made, it is, of course, a *fatal* one.

The following letter from Mr. Curtis, supports this objection to capital punishment:

NORTH SHORE, STATEN ISLAND, N. Y., }
14th May, 1868. }

HON. M. H. BOVEE: — *My dear Sir:* — I am very glad to hear of your successful labors, and I am very sure that your book will be full of most valuable information.

The two questions that you ask me, I can answer with-

out difficulty. As to the first — if the State has the right to maintain its own existence, and, to that end, may deprive men of their liberty, I do not see that it may not also, for the same purpose, deprive them of life. The question seems to me one of expediency; for it seems to me that my liberty is quite as sacred as my life. But, as life once taken can never, like liberty, be restored; as any mistake is necessarily a fatal mistake, and as nothing is more probable than a mistake, — I have no doubt that, in reply to your second question, society would be quite as secure, and public morality higher, without the gibbet than with it.

Yours respectfully,

GEORGE WILLIAM CURTIS.

Among the many mistakes to which frail human nature is liable, the one of *identity* is quite as common as any other. It would be quite natural to mistake the *voice* of a friend; to err as to *dates*, and even *localities*; but when human evidence goes so far as to identify the clothing, the size of the person, and even the *minutest features* of a friend, and yet be entirely mistaken as to identity, it would seem that this, of itself, should be a sufficient reason for the abolition of a law which involves, in its fatal execution, so many errors of the human mind.

We cite two instances of mistaken identity, recently reported; although, in these instances, no fatal consequences ensued. We take the following extract from the *Benton (Illinois) Standard*, of February 3rd, 1866 :

“A few weeks since, we noticed the fact of the finding of a human skeleton in the woods, about two miles east of this place, by Mr. Benjamin Williams, and of the verdict of the jury of inquest, designating the skeleton as the remains of a young man by the name of Henry Mahorn; and implicating David Williams, a son of Benjamin Williams, as his murderer. The circumstances surrounding the case were strongly against the accused, as the missing young man was last seen, in this community, about a year ago, in company with Williams, on their way to enlist in the army as substitutes.

“The accused, after an absence of a few weeks, returned home alone, stating that his comrade, Henry Mahorn, had enlisted in the 10th regiment Missouri infantry. This appeared plausible at the time, and Henry Mahorn was almost entirely forgotten by our citizens, until the finding of the skeleton in the woods. The suspicions of our citizens were at once aroused, from the fact that the clothing was identified as the same worn by Mahorn, when last seen. Their suspicions that he had been foully murdered by Williams, were much intensified by learning that his father and family, living in Tennessee, had never heard from him from the time he left this neighborhood, in company with Williams, to join the army; although diligent inquiry had been made, to ascertain, if possible, his whereabouts.

“The supposed murderer was immediately arrested, upon the rendering of the verdict of the jury of inquest, and lodged in the county jail to await his trial. On Monday, the 15th inst., the prisoner was brought into court, before His Honor Judge Duff, on a writ of *habeas corpus*.

“The court proceeded with the trial. The circumstances, as revealed by the evidence, pointed directly to the prisoner as the murderer of Mahorn, as the clothing found was identified as his, and certain teeth, which he was known to have had extracted in his life-time, were the identical ones that were found wanting in the jaws of the skeleton. In fact, the circumstances pointing to

the guilt of the accused were so strong, that nine-tenths of the citizens of this community were fully satisfied of his guilt.

“In the midst of the trial, imagine the utter astonishment of the court, counsel, witnesses, the eager and excited spectators, as well as the overwhelming joy of the prisoner in the dock, by the sudden appearance of Henry Mahorn, *in propria persona*, in the court-room, in full vigor of life, hale and hearty, giving the most unmistakable evidence that he had not been murdered, and that the accused was innocent of the heinous crime with which he was charged! The prisoner was so overcome with joy at this unexpected and apparently providential deliverance from the suspicious circumstances that surrounded him, that he wept like a child. The judge at once ordered the release of the accused.

“It seems that Mahorn had joined the army, under an assumed name, and, in consequence, was unable to hold correspondence with his friends; and being discharged but a few days previous to the trial of the young man Williams, as his murderer, he fortunately arrived in Benton the very day the trial commenced.

“This case should serve as a lesson to juries, to be slow in convicting on purely circumstantial evidence. It would be more in accordance with the dictates of humanity, that ninety-nine guilty persons should escape the punishment of the law, than that one innocent person should suffer an ignominious death.

“This singularly romantic case, which appears more like fiction than reality, has produced a profound sensation in this community, for the almost universal opinion was that the accused was guilty. Indeed, we think had not Mahorn returned, or been accounted for, that it would have been very doubtful whether a jury could have been obtained in the country, that would have acquitted him, in view of the strong circumstances that pointed to his guilt.”

We cite one more instance, in connection with human fallibility. It is taken from the *Albany Evening Journal*, of a recent date (1868):

“In the latter part of June, 1856, Captain John G. Weatherwax, attended by his cousin, Andrew Weatherwax, sailed in a lake boat from Plattsburg for a Canadian port. Having discharged his cargo, he came with his boat to Pike River, a stream or estuary that empties into or connects with Lake Champlain, just beyond the Canada line, and upon the east side of the lake. At Pike River, there was a settlement of considerable extent, and a wharf, at which the boat was conveniently moored. Here Captain Weatherwax was to obtain a lading of wood, with which to freight his boat, and return to Plattsburg.

“During the day, the two had a violent quarrel, which was witnessed by a man employed on the boat. It was at its height about eight o’clock, both persons threatening each other. At length ‘there came through the darkness to the ear of the listener, the sound of a dull, heavy thud, as of a powerful blow with some heavy weapon, crushing through the skull; and then all was still. Soon after this, the Captain came aft, but without his cousin.’ Next morning the hat of Andrew, and blood near it, was found on the forward deck of the vessel. The Captain was moody and taciturn, and did not speak of his cousin. The captain of another boat, a little distance away, also heard the altercation and threats and the blows.

“After his return to Plattsburg, Captain Weatherwax gave no satisfactory answer to the inquiries for the missing man.

“On the very spot at Pike river where his boat had been moored, the dead body of a man, recently killed, was taken from the water. The man had evidently come to his death by violence, for his skull was crushed, as if by a fearful blow from a murderous weapon in the

hands of a vigorous assailant. The body was identified. The man recognized it as being, beyond a question of a doubt, the man who had been missing from the boat, as Andrew, the cousin of Captain Weatherwax.

“The Captain was arrested, Mr. S. D. M. Beckwith issuing the warrant on the 8th of July. The preliminary examination brought out the most conclusive evidence of his guilt. There was no doubt of his conviction. His ingenious counsel bethought themselves of the resources of international law and treaties. They succeeded in establishing themselves in the position that, inasmuch as this affair had taken place in Canada, neither the authorities of Plattsburg nor of Clinton county, nor yet of the State of New York, had any thing whatever to do with the matter.

“One of them, Mr. McMasters, then recommended his client to flee from the country, to change his name and appearance—to go to the end of some unfrequented road, and there, out of the world, his identity concealed, to lead a new and different life. But the captain would not accept this advice. In the face of his accusers, and of all the world, he steadily and persistently declared his entire innocence, and refused to budge a single inch from his accustomed round of business.

“The matter acquired wide notoriety, and the British authorities made a request upon the government of the United States for his surrender. William L. Marcy was then Secretary of State, and upon his warrant, dated December 9, 1856, Captain Weatherwax was again arrested. He was taken at once to Montreal, and there closely confined in jail.

“His counsel, Mr. McMasters, adhered to him with a rare fidelity. He could not be permitted to conduct the case in a foreign dominion, but he gave the best advice in his power. The efforts put forth were desperate. Testimony seems to have been procured and used, which was not deserving of credence. It is probable that some one tampered with the jury. Captain Weatherwax remained in prison in Montreal about a year. He was

tried twice. The jury failed to agree, the first time; and the next one acquitted him, under direction of the judge, who ruled the evidence insufficient.

“The Captain returned home to Plattsburg, branded with the implication of murder. His relatives shunned him, and repeatedly accused him of the crime. Nevertheless, he continued for ten long years to assert his innocence.

“Early in the present month, intelligence was brought to his counsel, Mr. McMasters, that Andrew Weatherwax, the man supposed to have been murdered, had returned to Plattsburg. He refused to credit the story, till, on the 17th instant, the man came into the village, and showed himself alive.

“He gave the following account of himself: He left the boat that night, in a state of partial intoxication, and in a very irritable mood. Going to a rum-shop, he soon became embroiled in a quarrel, was arrested, brought before a magistrate, and fined. Not having the money to pay the fine, he was about being placed in close confinement, when a man stepped forward, and offered to take him as a seaman, giving an advance of wages to pay the fine. Andrew accepted, and was speedily shipped on an English vessel. He went as a common sailor to China, to Australia, and to various parts of the world, in different vessels. He returns now, and learns, for the first time, of his supposed death by violence.”

With all these facts before the reader, it would seem that nothing further would be required to establish the hideousness of a law which, when striking down the guilty, is even then invested with a barbarity disgraceful to Christian civilization; but when assailing the innocent — as it always *has*, always *will*, just so surely as it depends upon human judgment for its administration — then, indeed, is

it invested with a wickedness that man can not justify, and which the spirit of Christianity must always condemn.

Should innocent blood be shed on the morrow, through the *fallibility* of human testimony, a thrill of horror would pass through the breast of every member of community, when such fact should have been ascertained. All would express the deepest regret and sorrow; yet no one would, for a moment, feel that he had contributed, in the slightest degree, to such a result. The jury would feel no responsibility, for they merely returned their verdict in accordance with the evidence presented; moreover, they did not frame the laws. The judge would feel no uneasiness, for he only pronounced sentence as the law required; and the jury (not he) had found the verdict of guilty. So he would feel no responsibility. The law-makers would cast the responsibility upon the people whom they represented. The people would cast it back upon jury, judge, and law-maker; and there could not be found, in the entire community, a single individual who would feel the slightest responsibility. Yet there has been a diabolical act perpetrated, a grievous wrong committed; and there is no one to be found who will say "It is I." And still there is a deep and heavy responsibility resting some where; and that responsibility of the shedding of innocent blood, can find no other resting-place, except in the breast of every

individual who advocates the punishment of death for crime.

No such responsibility shall ever rest upon *us* ; for, denouncing the law of capital punishment as a relic of barbarism, and believing its retention a stain upon Christian civilization, we hope ere long to see it effaced from the statute-books of the civilized nations of the globe.





CHAPTER VI.

INSANITY, A PREDISPOSING CAUSE OF CRIME.

"If he have not intelligence and capacity enough to have a criminal intent and purpose, and if his moral or intellectual powers are either so deficient that he has not sufficient will, conscience, or controlling mental power, or if, through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent."— JUDGE EDMONDS.

NO human tribunal can ascertain the exact mental or moral condition of any criminal placed before it for trial. The motives which incite individuals to the commission of crime, are as varied as the organizations through which crime manifests itself; and as the wisest of judges, the most cautious of jurors, and the most impartial of witnesses, are too often left to *guess* at the condition of the criminal, and as doubt and uncertainty must ever envelop the most deliberate judicial proceedings, how presumptuous in man to insist upon the infliction of any legal penalty which is irremediable in its nature. It would seem that judges and juries, in justice to themselves, if not to the criminal, ought to be allowed the privilege of correcting their own mistakes. In capital cases,

mistakes are irremediable; in all others, they may be corrected.

The destroying of one human being by another is not, invariably, a crime. The person who *accidentally* kills another, is not regarded by community as a criminal; whereas, had the same result been obtained, with *intent* to destroy, on the part of such person, then an actual *murder* would have been committed. The death of the individual is as great a loss to family and friends, on the one hand, as on the other; and yet, in the one case it is termed a *casualty*, and in the other a *crime*. Here, then, we see that the knowledge of crime is based upon the *motive*, and not upon the *act*.

If this be the case, and upon this presumption courts are supposed to act, how vain to imagine that weak, erring, mortal man, possesses sufficient penetration to detect the motive of the crime which all are so ready to punish! Veiled from human eyes, are the secret workings of the human mind; and, in *punishing effects*, instead of *treating causes*, we are betraying a lamentable ignorance of those elementary principles which should be as the guiding star to both courts and legislatures.

Every treatise on criminal jurisprudence ever written, recognizes a felonious intent as an indispensable element of the crime; and proof of its absence acquits the slayer of the guilt of bloodshed, in every tribunal upon earth. But how are we to ascertain the *animus* of the criminal? How

are we to draw the precise line which separates sanity from insanity, or moral responsibility from moral irresponsibility? These are questions of the greatest importance, which we must settle conclusively, or we shall be guilty of the grossest injustice and the most revolting cruelty.

Every jury impaneled to try a criminal indicted for a capital offense, must, of necessity, pass upon the question of his sanity. How fearful the responsibility involved in such an issue! If the accused be insane, his execution would be murder; if sane, his acquittal would be fraught with danger to society, and at war with every principle of justice. Yet, jurors are continually compelled to pass judgments which affect the welfare of *immortal souls*, with scarcely a single clue to guide them in their decisions.

Dr. Brigham, one of the most excellent, as well as one of the most scientific, superintendents, having charge of the New York State Asylum, remarks: "To my mind, there is no stronger argument in favor of abolishing capital punishment, than the impossibility of determining whether some homicides are insane or not. There is no sure criterion of insanity; no sure test of its existence, by which it may certainly be recognized."

Man, says a distinguished author, is a compound being, made up of body and mind. Without pretending to decide the metaphysical question of the materiality of the latter, we may consider it as cer-

tain that the brain is the organ through which its manifestations are effected. The brain is a compound organ; a physical lesion existing in one portion of the brain, modifies or perverts that intellectual faculty of which it is the appropriate organ, while the portions of the brain which are uninjured perform their functions in a regular manner. Thus the portion of the brain whose office it is to receive the perceptions of vision, may be modified or perverted; while the portion whose function it is to receive the perception of audition, retains its integrity. The perception of feeling may be perverted or destroyed, while the perception of taste is unimpaired. Cases are not infrequent, where, in consequence of some cerebral lesion, patients can only see one-half of the name on a sign, while they can see the other half distinctly,—as was the case with the celebrated Dr. Abernethy; for a considerable time, he was utterly unable to see the *Aber-* in his name, while he could see the *-nethy* perfectly well, yet his hearing and all his other faculties were perfectly sound. Sometimes the brain is extensively diseased, while the rest of the body remains in perfect health; and on the other hand, the body may be in an exceedingly morbid condition, while the functions of the brain are unimpaired. Among insane persons, it is rare to find the functions of the brain equally disturbed. Sometimes the mental powers are chiefly perverted; sometimes the moral feelings are alone effected; sometimes the passions and pro-

pensities are morbidly excited; and sometimes the animal feelings are predominant.

Dr. Earle elucidates this point as follows: "We have seen numerous instances where the moral faculties exhibited a perfect wreck, while the intellectual faculties were even preternaturally vigorous. On the one hand, we have seen maniacs whose intellect seemed perfectly shattered, who, though their intellect be impaired, and reason driven from her throne, until the crowning workmanship of God is humbled, fallen, and crushed into the dust, whose hearts still swell with those emotions which are the attributes of angels, still cherish the germs of moral beauty, which will fully blossom in a better world, and is still watered with the warm current of feeling which shall be unto them a well of water springing up into everlasting life." *

Dr. S. B. Woodward, in his Tenth Annual Report to the Trustees of the Massachusetts State Hospital, thus speaks upon this point: "Now, many asthmatics are insane; and there is often a marked coincidence between their paroxysms of hard breathing and increase of delusion and general irritation. It is an interesting inquiry, whether the interruption of regular respiration in this disease, and the consequent circulation of carbon to the brain, disturbs its functions, and increases insanity. Nearly half the persons who have committed homicide, that

* *Journal of Insanity*, Vol. I., No. 3, p. 194.

have been in the Massachusetts State Lunatic Hospital, were asthmatics. Many insane persons know their own weakness, and yet are not always able to counteract the influences that excite them to mischief. They are governed by impulse, which is excited so suddenly that the counteracting or antagonizing influences do not move seasonably to prevent mischief. In this connection, it may not be improper to say that, of all the cases that have come to my knowledge—and I have examined this subject with interest for many years—I have known but a single instance in which any individual, arraigned for murder, and found not guilty by reason of insanity, has not afterwards shown unequivocal symptoms of insanity in the jails or hospitals where he has been confined; and I regret to say that *quite a number who have been executed, have shown as clear evidences of insanity as any of these.* In a large proportion of cases, the insane man is desirous to keep the evidence of his mental aberration out of sight, rather than to present it; while he who feigns insanity, generally presents it in caricature."

The following well-authenticated case of dangerous insanity, arising from an unrecognizable lesion of the brain, is given by Dr. Wigand, in his "Duality of the Mind." The parties were personally known to the author:

"A gentleman engaged in the higher departments of trade—a good man and an affectionate parent—had two sons, who, at the time I begin their history, were

respectively of the ages of five and ten. The attachment between them was so remarkable as to be the common topic of conversation among their friends. The children were together; and to see them walk round the garden, with the arm of the elder round the neck of the younger, while the other, who could not reach his neck, endeavored to clasp his waist; with the long auburn hair, in the fashion of the day, hanging down in ringlets, and, as the elder stooped to kiss his little brother, covering his face; those who had seen them thus occupied, their lovely features beaming with affection, would have said that nothing on earth could give them a more vivid idea of angels.

“The children, when separated for a few hours, were miserable; and when the time arrived for sending the elder to school, it was a subject of serious reflection with the parents and friends, whether so intense an affection should be checked or encouraged. The former was decided on; and the elder was sent to a distance.

“Both children were so exceedingly unhappy that sleepless nights, loss of appetite, incessant weeping, and rapid wasting of body, made every one fearful of the consequences of prolonging the separation; and they were brought together again. Those who witnessed the tumultuous joy of their meeting, described it as inexpressibly affecting. They soon recovered their health and spirits; and their mutual affection seemed, if possible, to be increased by their temporary separation.

“The experiment, after a while, was again made, with similar results; and it was decided never to risk another. An arrangement was now entered into with a school-master, to receive both boys; although contrary to the regulations of his establishment, which professed to admit none under ten years of age. The two boys kept themselves almost entirely aloof from all the rest. The elder helped the younger in his education, watched him with a kind of parental solicitude, kept a vigilant eye upon the character of boys who sought his society, and admitted none to intimacy with his brother, of whom he

did not entirely approve. The slightest hint of his, sufficed with the younger, who would almost as soon have contemplated deliberately breaking the Commandments, as opposing his wishes in the slightest degree. Both made rapid progress in their education, and their parents' hearts were filled with thankfulness for the blessing.

“ In the midst of this happiness, news arrived from the schoolmaster that, from some unexplained cause, the elder boy had begun to exercise a very unreasonable and tyrannical authority over the younger; that he had been repeatedly punished for it, but, although he always promised amendment, and could assign no cause, reasonable or unreasonable, for his conduct, he soon relapsed into his usual habits; and the schoolmaster requested to know what was to be done. The father immediately sent for both boys, and entered upon a lengthy investigation. The little one was almost heart-broken, and exclaimed, ‘ He might beat me every day, if he would but love me; but he hates me, and I shall never be happy again! ’ The elder could assign no reason for his animosity and ill treatment; and the father, after many remonstrances, thought it right to inflict on him very severe corporal chastisement, and confined him to his room for some days, with nothing but bread and water. The lad, on his liberation, gave solemn promises of altered conduct, but showed little affection for his brother — although the latter used a thousand innocent stratagems to inspire him with tenderness.

“ They returned to school. In a few days, similar scenes, and worse, occurred. The boy was again and again punished by the master, again and again promised amendment, but in vain; and he was at last taken away from the school by his father.

“ A repetition of severe punishment, long incarceration, and a rejection by all his relatives, had no effect in changing his disposition. His dislike to his brother became fixed animosity; and from animosity, degenerated into the most deadly hatred. He made an attempt on the child’s life; and if he saw him pass an open door,

would throw a carving knife at him, with all the fury of a maniac.

“The family now resorted to medical advice; and years passed in hopeless endeavors to remove a disposition obviously depending on a diseased brain. Had they taken this step earlier, these floggings and imprisonments would have been spared, as well as the heart-sickening remorse of the father. Still, the boy was *not insane*. On every topic but one, he was reasonable, but torpid. It was only by the sight of his brother, or the sound of his name, that he was aroused to madness.

“The youth now advanced towards manhood. When about the age of fifteen, he was taken with a violent, but Platonic, passion for a lady more than forty years of age, and the mother of five children—the eldest older than himself. His paroxysms of fury now became frightful; he made several attempts to destroy himself; but, in the very torrent and whirlwind of his rage, if this lady would allow him to sit at her feet, and lay his head on her knee, he would burst into tears, and go off into a sound sleep, wake up perfectly calm and composed, and, looking up in her face with lack-lustre eye, would say, ‘Pity me; I can’t help it!’

“Soon after this period, he began to squint, and was rapidly passing into hopeless idiocy, when it was proposed by Mr. Cline to apply the trephine, and take away a piece of bone from his skull, in a place where there appeared to be a slight depression. ‘The indication,’ said he, ‘is very vague, and we should not be justified in performing an operation, but in a case where we can not do any harm; he must otherwise soon fall a sacrifice.’

“It was done; and, from under the surface, grew a long specula of bone, piercing the brain! He recovered, resumed his attachment to his brother, and became indifferent to the lady.

“The disease which led to these terrible results, had its origin in a blow on the head with the end of a round ruler—one of the *gentle* reprimands then so common with schoolmasters.”

Comments on the above remarkable case are scarcely necessary. It points, however, to the important fact, which should never be lost sight of in all criminal trials, that the most marked manifestations of the *seemingly* wilful commission of crime, may, nevertheless, be but the uncontrollable exhibition of mental or physical disease; and, as it is oftentimes beyond even the eye of science to analyze the *interior* workings of the human mind, how absurd the supposition that juries, unskilled and unscientific, are competent to the task of discovering and defining the line of demarcation where sanity ends and insanity begins.

In the case of Kleim, tried for murder in 1844, before Judge Edmonds, of the First Circuit, in the city of New York, the learned and able judge told the jury that "there was no doubt that Kleim had been guilty of the killing imputed to him, and that under circumstances of atrocity and deliberation which were calculated to excite in their minds strong feelings of indignation against him. But they must beware how they permitted such feelings to influence their judgments. They must bear in mind that the object of punishment was not vengeance, but reformation; not to extort from a man an atonement for the life which he can not give, but, by the terror of the example, to deter others from the like offenses; and that nothing was so likely to destroy the public confidence in the administration of criminal justice, as the infliction of its pains upon one

whom heaven has already afflicted with the awful malady of insanity."

Kleim was acquitted, and sent, according to law, to the State Lunatic Asylum at Utica. The Superintendent, in a subsequent report, stated that Kleim was uniformly mild and pleasant — had never asked a question, nor learned the name of any one, — seemed to imperfectly recollect the murder trial; that his bodily health was good, but that his mind was nearly gone — quite demented.

The following letter from Hon. Wm. G. Bryan, * of Batavia, New York, furnishes some very desirable information on the important question under discussion :

BATAVIA, N. Y., Nov. 12th, 1865.

MY DEAR MR. BOVEE: — I cheerfully comply with your request to send a brief statement of the two murder trials and convictions, in this county, in both of which, the accused were sentenced to die; in both of which, the death penalty was commuted by the Governor,

* This letter of Mr. Bryan was sent us some two and a half years ago, since which time we have received the melancholy news of his death. Mr. Bryan was one of nature's noblemen; — a young man of marked ability, generous impulses, and shining social qualities. A successful practitioner of the law, he had given much thought and attention to the cause of penal reform, and was ever desirous of aiding the good work of modifying the harsher features of our penal laws. In his death, the reformers of the State of New York have lost a faithful friend and generous supporter. We knew him *well*, and can not refrain from this slight tribute to the memory of "the noble and the good."

on the ground of insanity; and in both of which, the opinions of the learned and eminent physicians who pronounced them of deranged minds, have been triumphantly vindicated by subsequent developments.

David Curry, an Irishman, was tried and convicted, at our March circuit, in 1859, for the murder of John Fawcett, an unoffending English laborer. Curry, who was known to be a man of very weak intellect, with a dash of occasional silliness or flightiness, shot Fawcett dead as he was passing his shanty in the morning. Fawcett had interfered to stop an affray between Curry and his kinsfolk, the night before; but otherwise, Curry had no ground of quarrel with him. He walked off, after committing the deed, to the woods, as he said, to shoot birds; and was arrested within an hour, by the officers. He was indicted, tried, and convicted, within thirty days; strong feeling prevailing against him.

The defense of insanity was interposed and sustained, as best it could be, under the pressure of the moment. He was proved to be of an extremely low grade of mental development, and to have acted in sundry strange ways since he parted with his wife, so that the attention of people was called to his conduct. Two of his sisters had suffered from mental derangement. Many of our local physicians, with more or less of confidence, testified to his *entire soundness of mind*; and the jury, after a short absence, found him guilty. His wild and silly appearance during the trial, and in receiving his sentence, aroused the attention of the court, the bar, and the community; and the Governor ordered a respite of the sentence, and directed Dr. D. Tilden Brown, of the Insane Asylum, New York City, and Moses H. Ranney,

physician of the New York City Lunatic Asylum, to examine Curry personally, which they did, and reported him of unsound mind, and not morally responsible for his homicidal act. The Governor at once commuted his sentence; and he is now among the most decidedly, if not hopelessly, insane, of Dr. Hall's patients at the State Insane Asylum at Auburn. And yet, but for the merciful interposition of Governor Morgan, and the ability, science and skill of the distinguished medical gentlemen sent to investigate his case, this poor, wretched and half-demented mortal, would have been executed on the scaffold which was already built, and in readiness to perform its bloody work.

Here, then, was a case which the community believed to be one of willful, premeditated murder — one in which the moral responsibility of the individual condemned to death, was scarcely questioned in the community; and yet the eye of science had penetrated far beyond, and discovered those mental peculiarities which are the sure indications of insanity.

The case of Polly Frisch, who was *five* times on trial for her life, was more complicated than Curry's, and, in some particulars, still more extraordinary. A full history of these two cases would fill a volume; but I must be restricted to a few facts only. She was indicted for the murder, by arsenical poison, of Henry Hoag, her former husband, and her two children, Eliza Jane, aged about two years, and Frances, aged nine years. Her husband was about thirty-eight, and she thirty-three years of age. She always lived kindly with Hoag, and was apparently attached to these children. She had the bodies of her husband and children removed from the old grave-yard

to the new cemetery, paid for the new lot herself, bought tombstones, which she paid for in sewing, and left a little space between Hoag's and little Frankie's graves, where she was to be buried. She never attempted to escape, and always denied her guilt. When the accusation against her first became current, she called at our office and insisted upon having a slander suit brought against certain parties; and requested that the bodies be disinterred and analyzed.

From careful inquiry, we were satisfied that, on the evidence treating her as *sane*, she could not be convicted; for there seemed to be an utter want of *sane* motive for the commission of the triple murder. Being struck with her appearance, however, and before the first trial, I requested the late lamented and venerable physician, Dr. John Cotes, to examine her with reference to her mental soundness. He kindly did so, and reported that, although she was a very singular person, and of marked idiosyncrasies, he should not venture to advise us to rely at all upon insanity as a defense.

On the trial for murdering her husband, she was acquitted by the jury. On the next trial, which was for poisoning little Eliza Jane, she was acquitted, by direction of the court. On the third trial, for causing the death of Frances, the jury, after being out *forty* hours, during which time they stood six to six, disagreed. On the *fourth* trial, after the prosecution had rested, and the defense gone on for a day or two, the judge permitted additional evidence against the prisoner — consisting of a re-exhumation of the deceased, and a new analysis of the stomach, made during the time, by Dr. Hardy, — to be introduced. This “turned the scales,” and secured

her conviction, after twenty-four hours of deliberation on the part of the jury.

On the ground of certain improper statements made to the jury by one of the sessions justices (out of court), we obtained a new trial. On this last (fifth) trial, Mr. Martindale was employed to assist Mr. Wakeman and myself. During the examination, some expressions of the accused, evincing increased happiness since the death of her husband and children, were proved, which, however, struck Mr. Martindale with force; for if true, as we were all inclined to think, there were strong indications that she was of a disordered mind. We at once telegraphed to Dr. Cook, Superintendent of the Insane Asylum at Canandaigua, who came and examined the prisoner. Her family physician being then here from the West (where he had removed, several years previously,) Dr. Cook was able to ascertain her former habits and condition, and pronounced her insane. Drs. L. B. Cotes, Root, and Griswold, testified to the same effect, while others expressed great doubts as to her sanity. But, as I feared and anticipated, the very late period when this defense was set up, and the prejudice always existing against those cases not obvious to the plainest understanding, could not be overcome; and the jury, believing her sane, convicted the prisoner, and she was sentenced to die. Such, however, was the difficulty in finding a *motive* for the crime, that the jury hesitated for *thirty-six* hours before coming in with their verdict. The Governor, however, granted a respite, and sent Dr. Edward Hill, of the State Lunatic Asylum, Auburn, to examine and report upon her mental condition. After several days of laborious and thorough investigation,

Dr. Hill fully concurred with Dr. Cook, and reported to the Governor that there were indications of insanity, difficult of detection, but existing, nevertheless; and, sooner or later, its fearful reality would be developed. Her sentence was then commuted to life imprisonment at Sing Sing.

Since her incarceration, her mental disturbance has increased; and the matron writes me that her strength is failing, and that for some time she has been decidedly insane, with a return of convulsions, epileptiform in character, and that her case is to be presented to the Inspectors, with a view to her removal to the Asylum at Utica. Our Sheriff, Pease, just returned from Sing Sing, says he found her very melancholy, and that she failed to answer him.

Here, then, are two cases, coming under my own observation, in which the accused were condemned to death,—judge, juries and witnesses failing to discover those peculiar evidences of mental derangement which science alone could detect, and where even science itself is oftentimes at fault; the manifestations of insanity, in its incipient stages, being beyond human scrutiny, and known only to the All-Seeing eye. My observation and experience, in these two cases, have convinced me of the solemn fact that, of those supposed criminals who have ended their lives upon the scaffold, a very large proportion were suffering, in a greater or lesser degree, from those mental disturbances which, sooner or later, would have terminated in hopeless insanity.

I am decidedly opposed to the penalty of death, for many reasons which I might give; but were there none other existing than the one I have named — the liability

of executing those of our race in whom the light of reason has become partially obscured by organic or other causes, frequently beyond even the power of science to detect, — this, of itself, would be a controlling reason, at least with me, why capital punishment should be abolished.

Wishing you continued success in your efforts to rid our country of this great stain upon our statute books,
I remain,

Faithfully your friend,

Wm. G. BRYAN.

The subjoined letter is from Hon. John Stanton Gould, a gentleman whose experience as a legislator and whose careful study of both medical and criminal jurisprudence, will give to his opinions much weight:

HUDSON, NEW YORK, *January 10th, 1868.*

HON. M. H. BOVEE: — *My dear Sir:* — Agreeably to your request, I answer your questions as follows:

1st. "*Do you consider the punishment of death necessary to the security and well-being of society?*"

I have given much attention to this question, for more than a quarter of a century; and believe that I have really been a patient and honest inquirer after truth, without any tendency to form foregone conclusions, and quite willing to accept the testimony of facts, on whichever side they might incline. I have personally conversed with over *ten thousand prisoners*, and with a very large number of police officers, prosecuting attorneys, and judges; in fact, I have neglected no means of arriving at the truth in relation to the matter; and the result of

all these inquiries is, that I am compelled to answer the question emphatically in the negative.

2nd. "*In your opinion, would its total abolition tend to an increase of those crimes which it now essays to prevent ?*"

I am very confident that it would not. On the contrary, if it were abolished, it would be so much easier to secure convictions, that punishments would be more certain, and hence crime would be more rare.

I remark, in continuation, that all my subsequent experience has confirmed the validity of the arguments submitted by me in a report upon that subject, to the New York legislature of 1847.

But I am obliged to confess that one of those arguments, like Aaron's rod, has swallowed up all the rest. It is, in itself, conclusive, even if no other existed; and I seldom present any other *now*, when conversing upon the subject with my unbelieving friends.

It is that drawn from the "Fallibility of human testimony." I have studied the subject of *mental disease* with much care, since that report was written; and I am sure that courts and juries are quite incapable of judging of those cases of diseased minds which often manifest themselves in homicidal acts.

It would be quite too laborious to state the evidence upon which the opinion is founded; but you will find some parts of it stated in an address delivered before the Homœopathic State Medical Society of New York, for 1866, which I send you herewith.

Truly yours, JOHN STANTON GOULD.

In *mechanics*, the skilled artisan will inform you that, having constructed, in the most careful manner, the several parts of a complicated machine, he will oftentimes find, on placing them in "running order," an irregularity in the movement—a jarring or grating sensation—some slight evidence of inharmonious action, which, to discover, will sometimes cost him hours, even days, of patient study; that, on ascertaining the difficulty, it would be of so trivial a nature as to have escaped, for so long a time, the eye of the workman who claims to be familiar with the movements of the various parts of the mechanism, and to understand the laws which govern their operation. If, then, the experienced workman is, at times, perplexed by the irregularity of motion in a piece of mechanism, the parts of which he himself has patiently constructed and carefully adjusted, how much more difficult to discover the causes which produce the *mental* and *moral* inharmonies in man! And yet, to ignorant and unscientific men is assigned the task of investigating the *mental* maladies of the criminal; and, in utter ignorance of the mysterious workings of the human mind, they condemn to *destruction* that wonderful *creation* whose marked irregularities they have neither the knowledge to comprehend, nor the skill to remedy.

Physical deformity is apparent to all; *mental* and *moral* maladies, originating in the defective or diseased brain, are not always discoverable, even when science has exhausted its resources. The human

being, whose symmetrical proportions are marred by the club-foot or the hump-back, excites the tenderest sympathies of every beholder; and sincere regret is expressed that the deformed being is not as other men, in physical organization; but when the *brain*, whose arched walls are impenetrable to human vision, becomes the region of deformity, disease or infirmity, the products of which are vice and crime, then how ready and willing are mankind to censure and punish the possessor of so unfortunate an organization!

The mentally diseased individual frequently takes the life of relative or friend, before destroying his own. There is scarcely a public journal which does not contain the details of some shocking homicide, the perusal of which excites indignation and feelings of vengeance in the mind of the reader; but when, in the succeeding paragraph, the statement appears, that the tragedy was completed by the suicide of the murderer, then do indignation and hatred give way to pity and sincere sorrow, in which feelings of retribution are permitted to take no part.

In the year 1846, a shocking tragedy occurred in the vicinity of Auburn, New York. William Freeman, a negro, and a native of that place, who had, but a short time previous, been discharged from a five years' confinement in the State prison, having provided himself with weapons, proceeded to the house of John G. Van Nest, in the suburbs of Auburn, and there, without notice, and without any

apparent motive, slew Mr. Van Nest, a worthy and wealthy citizen, Mrs. Van Nest, her sleeping infant, and her aged mother; and wounded mortally, as was then supposed, the laboring man who dwelt with them,—the maid servant only escaping because Freeman had become disabled in the affray.

Freeman was arrested some forty miles from Auburn, brought back, surrounded by a large concourse of the friends of the victims of the tragedy, and was taken to the scene of his crimes, to be identified by the survivors, in the presence of the dead bodies. So far from manifesting any compunction, he avowed the deed, described its details, and laughed continually during the recital. The excitement was intense, and it was feared that the infuriated populace would tear him from the officers of the law, and inflict summary vengeance upon him.

Popular feeling was so strong against the criminal that it was supposed no lawyer of repute would dare brave the popular feeling by undertaking his defense. Hon. William H. Seward was from home, and his law-partners assured the people that Mr. Seward should have nothing to do with the case. In due time, the prisoner was placed upon trial; and Mr. Seward, who had returned home, entered the court-room, and interposed the plea that the prisoner was insane. The plea was received; but it drew down on Mr. Seward the public indignation, not only in that vicinity, but of the whole country.

From this time, until the close of this interesting

case, Mr. Seward never, for a moment, relaxed his efforts to procure the acquittal of his poor, demented client. Standing alone, as it were, with judge, jury, friends,—in fact, the whole community—arrayed against him, Mr. Seward gave to the cause the whole energies of his great mind. It was not family nor friends that placed Mr. Seward at the side of Freeman, for the criminal had neither. It was not money, for Freeman was poor indeed. It was not popularity, for never had man a more unpopular cause, a more thankless task to perform. It was Mr. Seward's great love for humanity, his innate hatred of injustice and wrong, that aroused his energies on this memorable occasion, and drew forth the greatest of all his forensic efforts. It availed not. Freeman was convicted, and sentenced to be executed.

Mr. Seward did not rest here, but applied to the Governor for a pardon; but the application was denied. He then appealed to the Supreme Court for a new trial. After a patient hearing, the court reversed the judgment, and granted a new trial. “The same judge who had before tried and condemned the prisoner, now refused to try him again, on the ground of manifest idiocy. Indeed, the time soon arrived when all doubts were at an end. Freeman died in his cell, about a year after his trial and conviction. A *post-mortem* examination was made of his brain; and seven of the physicians of Auburn concurred in the statement that it was the subject

of a chronic disease, remarkable in its extent." * And thus was Mr. Seward vindicated.

No case with which Mr. Seward was ever connected, commanded so large a share of public attention; in no case was he ever more heartily condemned, nor in any case has he subsequently received so great a meed of public praise for the faithful discharge of a duty which could have been prompted only by the most unselfish of motives. This great effort of Mr. Seward was in the meridian of his years, and gave to that period of his life a moral splendor which time can never efface.

Nearly a score of years had passed away since the trial of Freeman, and we find Mr. Seward no longer an advocate at the bar; but, as the great Premier of the United States, enjoying, in a very high degree, the confidence of the American people. A conspiracy against the constitutional head of the government had culminated in the death of the President of the United States, and the attempted assassination of the Secretary of State. Those of the conspirators who had not escaped by flight or death, were upon trial before a military commission, charged with conspiracy, treason and murder. Of the number so arraigned and convicted, four were sentenced to die, and but *twenty-four hours* were given them between the pronouncing of the sentence and the execution of the mandate of the court-martial.

* Life of Hon. Wm. H. Seward; by Geo. E. Baker.

Among this number was the conspirator Payne, who had sought the life of Secretary Seward, and only failed to complete his murderous work by the strenuous resistance of the attendants of the Premier. A few hours more will terminate the life of Mr. Seward's assailant. What are the thoughts of the great Secretary at this time? Will he, in the evening of his life, as he had done in his meridian splendor, speak bold words for the criminal who is so soon to surrender his life? * * 'Tis past. The executioner has performed his bloody work, and Payne and his associates in crime are numbered with the dead. But God only knows how earnestly we desired that William H. Seward, enfeebled though he was by suffering and disease, should have risen grandly above the passions of the hour, and demanded of the President of the United States, the pardon of the criminal who had sought his life;—not that the remnant of years which might have been accorded the miserable Payne, would have been of essential value to himself or society, but that the moral force of such an exhibition of mercy and magnanimity on the part of the distinguished victim of the assault, would have been of inestimable value to Christian progress in all future ages, and for all coming time. It was an opportunity which occurs but once in many cycles, to rear, in conspicuous grandeur, a monument of neither "marble nor brass," but of Christian forbearance toward a fallen enemy,—perpetuating an act which would have

crowned with imperishable glory, the declining years of one of the greatest of American statesmen.

The opportunity was lost. Would that it might have been embraced,—not so much for the fame of the great statesman, as for the moral inculcation and practical exemplification of the sublime words of the Saviour, when, in the hour of approaching dissolution, looking with an eye of compassion upon his murderers, He touchingly exclaimed, “*Father, forgive them, for they know not what they do!*”





CHAPTER VII.

THE DEATH MENACE AS A DETERRENT OF CRIME.

There is no passion in the mind of man so weak, but it mates and masters the fear of death.—**LORD BACON.**

OF the many popular fallacies which have entered largely into the composition of human laws, that of attributing to the penalty of death a *peculiar* efficacy in repressing crime, stands chief and foremost. That the *menace* of death has prevented the commission of crime, in many instances, we are willing to admit; that a milder penalty would have been of equal, if not of greater deterrent force, we are prepared to establish by indubitable proof. That the deterrent force of the death *menace* has been vastly overrated, must be admitted, we think, when the following reasons for this conclusion have been carefully considered :

The fear of death is but lightly impressed upon the human mind. Men fear death *only* when it is

absolutely impending. Its *menace*, by human law, inspires no particular dread, for nature's unchanging law has decreed that *all shall die*. The celebrated Lord Bacon, in his essay* on death, most truly says :

“ It is worthy the observing, that there is no passion in the mind of man so weak, but it mates and masters the fear of death ; and therefore death is no such terrible enemy when a man hath so many attendants about him that can win the combat of him. Revenge triumphs over death ; love slighteth it ; honor aspireth to it ; grief fleeth to it ; fear occupieth it ; nay, we read that after Otho, the emperor, had slain himself, pity, which is the tenderest of affections, provoked many to die out of mere compassion to their sovereign, and as the truest sort of followers. A man would die, though he were neither valiant nor miserable, only upon a weariness to do the same thing so oft over and over. It is no less worthy to observe how little alteration in good spirits the approaches of death make ; for they appear to be the same men till the last instant. Augustus Cæsar died in a compliment ; Tiberius in dissimulation ; Vespasian in a jest ; Galba with a sentence ; Septimus Severus in despatch, and the like.”

Death is the common lot of all ; and yet men live with but little thought, and less of fear, of this great change. Men rarely fear death except when it is brought vividly before them. Men hazard life for money ; will run great risks of losing life to pursue some cherished scheme. The lessons of our recent war clearly illustrate how little men fear the “ king

* Essays—Moral, Economical, and Political, by Francis Bacon.

of terrors." A million or more of men *voluntarily* entering the army to face death upon the battle field; enlisting to shoot and to be shot at,— the considerations may have been patriotism, love of adventure, hope of promotion, pecuniary gain, or whatever influences conspire to direct human action; but all tending to establish the important fact that death is not feared except when it is absolutely *impending*.

Legislators, in all ages of the world, have labored under the delusion that life is the sum of all *good*, and the deprivation of life the concentration of all *evil*. Upon this hypothesis they have acted when establishing the penalty of death as a deterrent for crime; and it is just here where the mistake has been committed. To the healthful, the industrious, the virtuous, and the good, life is enjoyable and full of pleasure. To the diseased, the indolent, the vicious, and the criminal, life becomes a strange mixture of both happiness and misery, with an undoubted preponderance of the latter element; and in many cases, death would be regarded more in the light of a blessing than a curse. The well established fact that there are at least *seven suicides* to *one homicide*, attests the truthfulness of the proposition, that life is oftentimes a burden; oftentimes so unendurable that death is the sought-for relief; hence the idea of legislating men out of existence under the supposition that it will blot out the sum

of their enjoyment, or, that it will increase the security of the people, arises, we think, more from the teachings of *theology* (not religion) than from a philosophical examination of the question. The threatened penalty of death can be of deterrent effect upon those only who are criminally inclined, and it is this class of people who, as a general rule, place but little value either upon their own lives, or the lives of others.

Upon this point, Jeremy Bentham says : " Such is the situation of a majority of malefactors, that their existence is only a melancholy combination of all kinds of wretchedness. In all such cases, then, the dread of death has been ineffectual."

Hon. Robert Rantoul yields his testimony to the indifference to death which prevails amongst the criminal classes : " The gibbet indeed, certainly disables those who die upon it from infesting community ; but their death seems not to contribute more to the reformation of their associates than any other method of separation. A thief seldom passes much of his time in recollection, or anticipation, but from robbery hastens to riot, and from riot to robbery ; nor, when the grave closes upon his companion, has any other care but to find another."

Mr. Charles Neate, M. P. in his treatise entitled, "*Considerations on the Punishment of Death,*" Chapter VIII., " On the Fear of Death as a Preventive of Crime," says :

“ We are all of us condemned to die, and that, as we well know, by an irrevocable sentence, of which the execution can not be many years deferred, and may be to-morrow ; and yet how little do we think of this, not only when youth and health seem to place between us and the dark valley beyond, a hill which we have yet to ascend, but when declining age and failing health have brought us to the strait and sloping road, out of which there is no turning, and of which, though we can not see the exact end, we know very well where to look for it. We are even willing, for the most futile causes, to multiply the chances of death which each day brings with it : we do it for the sake of gain ; we do it for the sake of pleasure ; we do it even sometimes for the want of something else to do.

“ Remembering this, and considering it as we should do, we may well wonder that lawgivers should have trusted so much to the threat of death ; that is, to an increased probability of dying in a particular way, as a sort of specific against crime. But, in truth, this was not, I think, the original reason of capital punishment. The slaying of the homicide was at first meant as an act of vengeance against him, rather than as a warning to others ; it was rather given to the family of the sufferer as a consolation, than exacted by society for its protection ; and this primitive notion of the vindictive character of punishment is still, in cases of murder, at least, the one which prevails beyond all other notions in the popular mind ; and the chief reason with the bulk of mankind, as it is perhaps also the best reason in itself, for maintaining, in this instance, the penalty of death.

“ But I am now considering only the uses of this penalty by its terror as a threat ; and here I must admit that however little we may think of death while any uncertainty hangs over its manner or its time — while it is still a shifting and shapeless shadow, upon which the mental eye can not rest — yet as soon as the when and the how are brought clearly and nearly to us, so that we can both measure our life and realize our death, our

utmost energies are taxed, and often in vain, to meet face to face our long forgotten enemy.

“Death, indeed, if we could make death the certain and immediate consequence of crime, would be the most effective terror that human law can dispose of; it is that, at least, into which all other evils which the law can inflict may be resolved by our own choice. But, do what we will, we can not make death the certain consequence of crime. It will be at most but a probable result, of which the chances will be weighed and estimated by a scale of opinion varying greatly, according to the circumstances in which we may be placed, the feeling with which we may be possessed at the time, and the character by which we may be habitually swayed.

“And here, first, I would call attention to a truth which, obvious as it is, has been strangely overlooked by the advocates of capital punishment, namely, that we should judge of the effect of that punishment as a preventive, not by what the criminal seems to feel when the infliction is at hand, but by that which he probably felt at the time that he meditated the crime, or was about to commit it. It may often happen, and there is good reason why it should happen, that the same man who is most overcome at the sight of immediate death, thought least of it when it was distant or doubtful — for the same carnal and sensual habit which yielded so easily to the present impulse or temptation, is equally without force against the present terror; and even as to those who are least liable to be carried away by impulse, who are of a temper to weigh deliberately the probable consequences of their acts, in order to estimate the effects of the fear of death upon their minds, we must go back to the time when it was still an open question with them, whether they should incur the penalty or not. Many, even of such men who would think beforehand — that is, at the time when such thoughts are useful — that perpetual imprisonment was an evil more to be dreaded than death, would yet be more utterly struck down with that which they had supposed to be the lighter sentence. Of

perpetual imprisonment we see only the beginning. It is foreshortened to a point; of death, so far at least as it is the end of life, we see at once the whole. The picture is complete at one stroke. It is all spread out before us on the one dark plain. I will illustrate this by a comparison that comes home to us all. If we were asked, whether we would rather endure perpetually a mild toothache, or go through for once the pain of toothdrawing, we should all of us, without hesitation, prefer the latter; and yet the sight of the dentist and his instrument would disturb our nerves more than the first twinge of the incurable pain. The analogy, and the argument founded on it, would hold good even if we could make death a certain penalty; it applies much more forcibly when distance is added to doubt.

“These are general observations applicable, though in different degrees, to all men. Let us now consider the same point, *i. e.*, the efficacy of the fear of death, with a more special application to the character of criminals, and the circumstances of crime.

“In the first place, the crime we have to guard against is murder; that is, to speak of it in its commonest, and, therefore, most pernicious form, the killing by violence, for the murder by treachery, or by poison, is rare and exceptive. Now, however base and cowardly, in one sense, it may be to kill a man at an advantage, which a murderer either always does or tries to do, yet it is so far a sign, if not an act of courage, that it is most easily and readily done by men of fearless natures. It is not only that there is the actual shedding of blood, from which the timid recoil, even if it can be safely done, for they see in another man’s the image of their own; but there is, for the most part, a good deal of actual danger quite apart from the legal consequences attaching to the commission of that sort of murders which we have most to guard against — those, for instance, which arise out of violent robbery; and reluctant as we may be to apply a noble word to so base a use, murderers, whether by a gift of nature or acquired hardihood, as a class, are brave

men. Rush was a brave man; Thurtell was a brave man; Mrs. Manning as brave as any man; and, therefore, when we are trusting to capital punishment as our security against murder, we should remember that we are using the threat—it can only be the threat—of death against those who are less liable to be moved by it than the majority of mankind; and we have seen how little even these think of death till it is certain and immediate. The word threat, which I have just used, suggests one objection to capital punishment which I have not seen elsewhere urged, and which, to many, will seem fanciful; but I believe that the denunciation of death as a penalty has, like the sight of a bare weapon, or the smell of gunpowder, an irritating and provocative, as well as a deterring effect, and that there are some natures even among criminals which are rather spurred to the commission of crime, or at least have their scruples lessened, by the thought that in taking the life of another they are risking or giving their own."

If the fear of the great future, even when painted with horrors such as only a Milton or a Pollock could depict, produces no very marked effect upon human action, it is hardly reasonable to suppose that the *menace* of death by human law, will be very effective in the repression of crime. All mankind shrink from impending danger; yet seem utterly regardless of pains and penalties when satisfied that threatened visitations of that nature are far in the future. Could the individual, who has resolved to murder his fellow creature, *know* that he would be stricken down the next moment after committing the crime; or, did he *know* that even *ten* years of imprisonment at hard labor would be his punish-

ment for the commission of that offense, the deterring motives would be of the most forcible character; but he *knows* nothing of the kind; in short, he has probably satisfied *himself* that his crime will not be detected; and when the impulsion to commit the crime has outweighed the probabilities of detection, the *nature* of the threatened penalty is entirely lost sight of; and whether the *menace* be burning at the stake, hanging, or imprisonment, the effect, in this case would be the same, and of no force whatever.

In those cases where the menace of death has prevented the commission of crime, the menace of imprisonment would answer quite as well; in proof of which we offer, in their appropriate places, the experience of those states and countries in which, for many years, capital punishments have been abolished; establishing, very clearly, the important fact that crimes, which were formerly punishable with death, have not increased in consequence of the abrogation of the death punishment.

The value of a penalty depends mainly upon the *uniformity* with which it is enforced. The thorough enforcement of all laws is the best test of their efficacy. In their nature, they must be adapted to the condition, the wants, and the temper of the people, who are to see them enforced; for if they are disapproved by the people, and public sentiment so affects judges and juries as to render their execution inoperative, the deterrent force which they may have formerly possessed, is so far lessened, as really

to afford to crime an immunity from punishment. This was the case when England punished *capitally* the crime of petty larceny. The laxity with which the law was administered; the repugnance with which it was regarded by the people; and the manifest determination of juries to acquit the criminal in the face of the most positive evidence of guilt, tended largely to increase those crimes which the menace of death sought to prevent. The very severity of the law, in punishing with death the crime of petty larceny, rendered its administration abortive; and thus indirectly gave to crime of that degree the fullest license for its commission.

Among the several objects for which penalties are established, the *prevention* of crime, it is generally claimed, stands conspicuous. If, then, penalties are enacted for the deterrence of crime, it seems clear that those penalties which shall be most *rigidly* and most *certainly* enforced, *will prevent* the commission of crime where the *uncertain* penalty, or the laxly administered law, *will not*. And it is just at this point we offer one of our gravest objections to the death punishment as a deterrent of crime, viz.: *the law can not be uniformly enforced*. The repugnance in the minds of the people to its revolting features has become so great, that juries are unwilling to convict, judges to sentence, or sheriffs to execute; and with every conviction comes the struggle between the cruel law on the one hand, and the humanity of the people on the other. If the people

can not save the life of the criminal through the action of the jury, the “fountain of mercy” is besieged, and where the people fail of success in the jury box, their triumph in the Executive Chamber is frequently assured.

Lord Brougham’s observations of the administration of the law of capital punishment in England, drew forth from that great statesman the following remark: “It is most discreditable to any men entrusted with power, when the governed turn around upon their governors and say, Your laws are so cruel, or so foolish, that we can not and will not act upon them.”

Gov. George Clinton, of New York, in 1798, furnished a similar reason for the abolition of the death punishment: “When a law is treated with manifest disrespect, it should be either repealed, or better means made use of to enforce it.”

Prof. T. C. Upham, D.D., Bowdoin College, Me., seemed to entertain a similar view: “The difficulty of procuring capital convictions is increasing; and it is confidently anticipated that capital punishments must cease in this country, if for no other reason, because they can not be carried into effect.”

If, then, as experience in our criminal courts seems to illustrate, the law of capital punishment can not be *uniformly* enforced, a due regard for the administration of justice would seem to point out the necessity of the supersedure of the present law by one whose execution would prove less revolting

to the moral sense, while its enforcement would command the general approval of the people. The aversion to the law of "blood for blood" is constantly increasing in the minds of the people, and with an augmentation of this feeling, a lessening of the deterrent force of capital punishment becomes more and more apparent; and when its retention upon the statute book no longer commands the respect of the people, its efficacy as a deterrent has forever fled. To longer continue it, under these circumstances, would be to offer a license to crime, and a proffered immunity from its legal penalties.

The Hon. Cassius M. Clay, whose letter we append, confirms this view of the case.

WHITE HALL P. O., Nov. 6, 1860.

M. H. BOVEE, Esq.—*Dear Sir:*—Your favor of the 16th ult. is only now received, on my return home. I regret that my time will not allow me more full consideration of the subject of capital punishment, and a more lengthy reply. There can be no question about the historical fact that the severity of punishment has decreased with our advancing civilization—still that does not prove that the amelioration of crimes has been the result of the amelioration of the punishment. I am inclined to believe the necessity for severity has ceased in proportion to an advanced civilization, the more equal and just distribution of property, equality of rights before the law, more philosophical ideas of morals and religion, etc. Hence, in some communities you find men shocked at the infliction of death for manslaughter in any degree,

and in others the public vengeance demanding it in the severest possibility. I should say, therefore, that whenever a community, in its most general sensibility, hesitates to inflict a punishment in the statutory mode, such punishment ought to be modified; as certainty of punishment is necessary in all cases where the evidence of the violation of law is complete.

If I am right in this view, the question of the death penalty is never an universal one; but is it requisite here, and here? I am clearly of the opinion that our American civilization requires it to be confined to the killing of others. I am not prepared to say that society is yet ready for its entire abolition. At all events, it would do no great harm to try it, for if it is found not to work well, it could be restored.

Yours, truly,

C. M. CLAY.

The evidence of the utter failure of the death penalty as a deterrent of crime, is so overwhelming and conclusive, that we can scarcely add to the public conviction on this point. We take pleasure, however, in presenting, in this connection, the experience of one of the ablest jurists of the country, who, as one of the Supreme Judges of the State of New York, commanded the confidence and respect of the people and the Bar.

NEW YORK, *May 12th, 1868.*

DEAR SIR: Having, during the period that I occupied a position on the Bench of the Supreme Court of this State, had about fifty capital cases tried before me,

it seems to me eminently proper that I should respond to your inquiries in regard to capital punishment.

I had, at that time, no conscientious scruples against the death penalty, but had great doubts as to its expediency, and good policy; and all that I witnessed in my judicial career only tended to increase those doubts.

Of all the cases before me, only three bore any evidence of premeditation; one of these being for arson, and two for murder. In all the other cases, the offense was the result of sudden impulse, and most frequently accompanied by intoxication. For such cases, the death penalty was far too severe, both as respects the offenders and the public, engendering in both an injurious feeling of dissatisfaction with the administration of justice.

This state of things grew out of an unhappy alteration in our law of homicide, made by our Revised Statutes. The Revisors intended to modify the law, but they unwittingly augmented its severity. The common law, as it existed among us before our Revised Statutes, from a humane consideration of the infirmity of our nature, allowed a homicide, committed under the influence of a sudden passion, to be regarded as manslaughter; and punished by imprisonment. But the Revised Statutes established an intention to kill as the chief distinction between murder and manslaughter; and I was compelled, though slowly and with great reluctance, to declare all those cases to be murder, where there was an intention to kill, though that intention was formed on the instant and under the sudden impulse of passion.

This view of the law was sanctioned by our highest court, and the result was that, out of some twenty con-

victions before me, all but three, as before mentioned, which might, under the old law, have been regarded as manslaughter, were treated as murder, and were accompanied by the sentence of death.

The object of the Revised Statutes was to modify our penal code, by doing away with the doctrine of implied malice; and confining convictions for murder to express malice or an actual intention to kill; but the practical effect was, in the cases before me, largely to increase the cases that were subject to the punishment of death.

This state of things was, I am persuaded, injurious in every aspect in which the subject of the punishment of death can be viewed.

There are three grounds on which that punishment is justified by its advocates, viz.: vengeance on the offender; preventing him from further offending; and *deterring others* by the example. In every one of these aspects it must be injurious to inflict the penalty of death in the cases to which I have referred, and which must, under our law as it now is, be the greater portion of capital convictions among us.

To permit the element of vengeance to enter into our calculations, is reducing us to the level of the offender; and when we do to him what he has done to another, we can hardly hope to avoid doing it with the same feeling. I have witnessed several manifestations of this. In the Burdell case this feeling affected our whole community; and for a while almost every man, woman and child among us were rampant to hang somebody. In the Colt case, that which was an accidental homicide, was, by a sort of “rawhead and bloody bone” exhibi-

tion on the trial, converted, in the minds of the jury and the public, into a deed which demanded inflexible retribution. And when to this feeling you add one of fear, as was the Burdell case, and as is often the case in apprehended servile insurrections, you convert the whole community into criminals, so far as the indulgence of our passions can do so.

To prevent the offender from repeating his crimes, it can not, in all cases, be necessary to take his life. In that numerous class of cases which are the product of sudden impulse, it can hardly be necessary at all; and the end in view can be as well attained by imprisonment or reformation. And when we are considering this object, namely: deterring the offender from a repetition of his crime, we must see that it is nothing but absolute necessity that can justify the punishment of death.

The great argument, however, with many, *that* of deterring others from following the example of crime by the force of example of punishment, is wholly inapplicable, it seems to me, to the cases of sudden impulse to which I am referring. In sudden passion we do not stop to calculate consequences to ourselves or others. It is the deliberate assassin who pauses thus to calculate; and that pause is more frequently used to devise the means of escaping detection, as in the recent Walton and Matthews homicides, than in learning to avoid the commission of the offense; and even with such, it is the certainty, rather than the severity, of punishment that deters. With him who is hurried away by the torrent of overpowering passion, it is neither the one nor the other that has any influence. It requires but a slight knowledge of human nature to become aware that this

is so. All experience tells us so ; as does the whole history of criminal jurisprudence.

I have thus far confined my remarks to one class of cases arising under our State statutes. I have done so because you must have, among your correspondents, many who can argue the general question better than I can.

Of one thing I am persuaded from long observation ; and that is, that a capital punishment is never inflicted without injury to the community in whose midst it is perpetrated.

There is a strange feeling in our nature which teaches us to enjoy the sight of human suffering ; and that is the more intense the more extreme the suffering. Hence, you will see the soldier, who has once been in battle, have a craving for a renewal of the scene of death and carnage. Hence, when some one is stricken down in our streets by some grievous accident, you will see a crowd rush around him, follow his body to the nearest surgeon, and surround the house, long after it is possible to see any thing that is going on inside ; and, hence, whenever an execution is public, you will see great crowds assemble and fight with each other for the best chance to witness the last agonies of expiring mortality.

What is it that produces this ? It is not sorrow for, or sympathy with, the suffering criminal ; for those feelings would teach the bystander to render aid, when he could, and when he could not, to turn away. No ; it is a secret delight that is implanted within us, showing itself the strongest in the most vulgar and untrained natures, and which can never be indulged without a tendency to harden and brutalize the heart.

I saw this exemplified once, in a man who was one of the jury in a capital case tried before me. He was so interested, thenceforth, in all that class of cases, that for several years he was always in my court room when any such cases were on trial, and spent days in listening to them, to the neglect of his family and his business.

Is there any thing in the benefits flowing from capital punishment that can at all compensate for this brutalizing effect on the masses? And as we know that habit may harden the heart to the shedding of blood, we may surely be admonished of the danger of contributing even a single act toward the establishment of such habit.

But I will not pursue this subject. Perhaps what I have said may contribute something towards the end you have in view; and I hope it may, for I am now of the opinion that both *morally*, and as a matter of *policy*, capital punishment is wrong.

I am, very respectfully yours,

J. W. EDMONDS.

Hon. MARVIN H. BOVEE.

The foregoing expression of opinion, by Judge Edmonds, on the effects of the law of capital punishment, as derived from his long experience as a judge, will command the attention and serious reflection of every individual familiar with the judicial experience of this eminent jurist. Of a celebrated charge, delivered by Judge Edmonds to a jury in the case of Klein, tried for murder, in New York city, in 1846, the Hon. William H. Seward

spoke as follows: "These words deserve to be written in letters of gold upon tablets of marble;" a high compliment to a distinguished judge from a distinguished statesman.

Very many opinions, accompanied by a great array of facts, might be still further adduced to illustrate the utter failure of the death punishment as a deterrent of crimes; but space forbids.

Speaking for ourself, we are free to acknowledge that we have but little faith in the deterring force of any legal *menace*. The deterring powers of threatened penalties are, undoubtedly, overrated; that the element of *fear* is easily excited in many organizations, is undoubtedly true; but as legal *menaces* are always remote, and *fear* is rarely excited except in *impending* danger, *menaces* of pains to be inflicted, are of but little force in the repression of crime.

Wendell Phillips, Esq., the Cicero of America, as he is sometimes called, attacks the gallows with vigor; and in the subjoined letter, denies to society the right to inflict deterrent penalties.

BOSTON, *July 30, 1868.*

DEAR SIR: What we need in this country is a rigid enforcement of law. The offender, rich or poor, should be absolutely certain that he will lose his liberty, and live on bread and water, at hard labor, until he is fit again to be trusted with his natural and civil rights.

The large untrained mass sent us from abroad, makes this still more necessary than heretofore.

But the term “punishment” should be banished from all discussion as to how to treat crime. Criminal though an act be, *man* does not punish; he merely restrains the offender in order to protect society and reform the criminal.

Time-sentences should be abolished. A man should be restrained until he is fit again to mingle in society; no matter how long an imprisonment that may require, or how trivial the offense.

The gallows, therefore, I abolish altogether. It never could have been defended except on the ground of absolute necessity, in order to protect society. It would be absurd to make any such plea for it now, since we all know that, with the resources of modern times, we can keep a man within four walls as long as we see fit. *That* guards the community; *and we have no right to punish him in order to deter others from following in his steps.* The moment a man violates law, he forfeits his civil rights; this gives society the right, and imposes on it the duty, of subjecting him to the best moral influences it can command, as long as is needed to make him a good citizen; this is all the right society acquires over him, and this does not justify the gallows.

Yours truly,

WENDELL PHILLIPS.

Hon. M. H. BOVEE, Wisconsin.

That portion of Mr. Phillips' letter which we have placed in *italics*, will startle that class of our readers who are believers in the efficacy of *deterrent* forces and *retributive* punishments. *It has*, however, *our entire approval*; and expresses in few words that which we desire, in some future volume, to place in a more amplified form.

To punish crime, as a deterrent example, is an act of absolute injustice. To add one grain's weight of punishment more than is necessary to reform the criminal, is to punish *innocence*, *to that extent*, for the doubtful benefit that may accrue in deterring the possible commission of crime in others. That such punishments are unjustifiable, we most fully believe; and to us they seem to have no foundation except in that *vicarious* doctrine which inculcates the pernicious principle that justice demands the concentration of miseries upon the *innocent* soul, that immunity from punishment may thereby be secured to the *guilty*; teachings which can, in no wise, enlarge the fountains of human justice, nor minister to the beatitudes of the Christian religion.





CHAPTER VIII.

THE DEATH PUNISHMENT.—ITS MORAL EFFECT UPON SOCIETY CONSIDERED.

“I am a strong believer in the influence of hope, rather than that of fear. The longer I live, and the more I see of men, the more I am disposed to think well of their hearts and poorly of their heads.”—HORATIO SEYMOUR. (*Extract from letter to author.*)

We have clearly shown, in the preceding chapter, that the *menace* of death, as a deterrent, can be made no more effective in the repression of crime, than penalties less vindictive and less sanguinary. If, then, the *menace* of death falls short of accomplishing what has been claimed for it, and as the *threat* of death punishment is ever *remote* and ever uncertain in its application, it would seem to be the wiser course to establish those penalties *only* which can be uniformly enforced; for, certainly, no others can be efficacious. As the *menace* of death by human law is but the re-affirmation of God’s law, which says that all men must die, there seems to be no well-founded reason

why especial efficacy should be attached to it, as a preventive of crime.

“But,” says the advocate of the gallows, “the law *is*, at times, *enforced*, and when carried into effect, the fears which its execution inspires, fill men with awe and solemn reflection, and this leads to the repression of crime.”

Let us examine the presumed efficacy of this law, when executed, as a deterrent of crime. Penalties are established, it is supposed, to sustain the morally weak and the mentally infirm when temptation assails them. When the temptation to commit crime *slightly* overbalances the moral or mental resistance of the individual, it is imagined that the threat of direful punishment will, in very many instances, so far sustain the mental and moral powers as to overcome the temptation; and the effect which an execution produces upon the fear of man is, it is supposed by many, of so vivid and startling a character, as to repress the *intended* commission of crime when less terrible penalties would prove ineffective. Let us examine the position of our adversaries upon this point, speaking here of the effects of capital penalties upon the *criminally inclined*, or *viciously* disposed, persons who may be permitted to look upon the execution of a human being.

Douglass Jerrold has an excellent story called “The Lesson of Life,” in which he gives a striking view of the subject of capital punishment. It is a dialogue in the jail of Paris, between a common

hangman and a priest, who had visited the prison on an errand of mercy.

Jacques Tenebræ, the hangman of Paris, quaffed his wine and water, and drew his chair near the chair of Father George, the most rigid and conscientious monk of the order; such, at least was his reputation, and in a tone of familiar confidence — for the friar was Antoinette's confessor — said :

“Father George, I want you to instruct me; never mind that poor lad — poor innocence !” cried Jacques, observing that the monk glanced at the vacant Narcisse: “Yes, I want your counsel in an affair of conscience,” said the hangman.

“Thou shalt have it,” was the benevolent promise of the monk.

“Thou hast called death a punishment, most holy father; let us debate that simple point ;” and Jacques sidled still closer to his reverend guest.

The declining sun shone through the casement, and falling upon the heads of the executioner and the monk, bent as they were towards each other, presented a strange and striking contrast of character, as developed in their features. The monk's face was long and sallow, marked with deep lines about the mouth, which seemed restless with ill-concealed passion; his eye was black, full and heavy — a joyless, unreposing eye.

The countenance of Pierre Tenebræ was round and somewhat jovial; a love of mirth appeared to twinkle in his look, and his lips seemed made for

laughter; his black hair and beard were sprinkled with white, and his complexion was a clear, deep brown, flushed on the cheek with wholesome red. The sun, shining upon these heads, brought out their separate, opposite characters in the strongest relief to each other. A stranger, looking at them from a distance, would have thought the hangman some humble, yet wealthy, good tempered citizen of Paris, consulting with his household adviser, on a daughter's portion, or a son's patrimony, or some other domestic arrangement. Very different was the subject at that hour which supplied the discourse of Jacques Tenebræ, the hangman of Paris, and Father George, the austere Capuchin.

“Thou dost call death a punishment?” repeated the executioner. “I live by it, and should, therefore, with the wisdom of the world —.”

“The wisdom of this world is arrant folly,” interrupted the Capuchin.

“I am of thy ghostly opinion,” observed Jacques Tenebræ, “as to a good deal of it. Yet, death being made a punishment, makes my profession; and my profession — I speak this to thee in private, and as a friend — my profession is little less than arrant folly; a mistake, a miserable blunder.”

“The saints protect me! what meanest thou by such wild discourse?” inquired Father George!

The Capuchin moved suddenly from the side of the querist, and surveyed him with a look of horror.

“Nay, nay, answer me,” said Jacques, “but for

the form of argument. 'Twas for that I put the question."

"'Tis scarcely lawful even so to put it," said the Monk. "However, let it be granted — there is another world."

"And all men must die?" asked Jacques Tenebræ. "Eh? — is it not so?"

"We come into the world doomed to the penalty," replied the Capuchin. "Death is the common lot of all."

"Of the good, and the wise, and the unwise? Eh, Father!" cried Jacques.

"'Tis very certain," answered the Monk.

"If such, then, be the case," said Tenebræ, "if no virtue, no goodness, no wisdom, no strength, can escape death — if death be made, as you say, the penalty of the good, why should it be thought the only doom for the blackest guilt, which, it may be at the very same hour, the highest virtue is condemned to suffer? Answer me that!" cried the hangman.

"'Tis a point above thy comprehension, Jacques Tenebræ," replied Father George, apparently desirous of changing the discourse. "Let it rest, Jacques, for abler wits than thine."

"You would not kill a culprit's soul, Father George" asked Jacques, heedless of the wishes of the Capuchin.

"What horror dost thou talk!" exclaimed the Monk.

“But for argument,” said the unmoved Jacques. “Nay, I’m sure thou would’st not. I have heard thee talk such consolation to a culprit, that at the time, I have thought it a blessed thing to die. Well, he died, and the laws, as the cant runs, were avenged. The repentant thief, the penitent blood-shedder, was dismissed from the further rule of man; perhaps the very day he was punished, a hundred pious, worthy souls were called from the world; he was discharged from earth, and — but thou knowest what thou hast twenty times promised such misdoers, when I had done my office on them.”

“Thou art ignorant, Jacques Tenebræ — basely ignorant; thou art so familiarized with death, it has lost its terrors to thee,” said the Capuchin, who again strove to shift the discourse.

“Of that anon, Father George, as for death on the scaffold, ’tis nothing — but I have seen the death of a good man, in his Christian bed,” said Jacques, “and that was awful.”

“Thou dost own as much!” observed Father George, “thou dost confess it.”

“Awful, yet cheering; and ’twas while I beheld it that the thought came to me of my own worthlessness.

“As a sinner,” interrupted the Capuchin.

“And hangman” cried Jacques. “I thought it took from the holiness, the beauty, if I may say it, of the good man’s fate — as you rightly call it,

father, to give death to the villain, to make it the last punishment, by casting him at one fling from the same world, with the pious, worthy creature who died yesterday. Now the law would not, could not if it would, kill the soul, and—but thou knowest what passes between thy brotherhood and the condemned; thou knowest what thou dost promise to the penitent culprit; and, therefore, to kill a man for his crimes would be a fitting, a reasonable custom if this world were all—if there were nought beyond. Then, see you, Father George, thou wouldst hasten the evil doer into nothingness; now, dost thou speed him into felicity. Eh! Am I not right, is it not so, holy Father?"

"And is such thy thought—thy true thought?" inquired the Capuchin.

"I thank my stars it is, else I had not held my trade so long. Punishment! Bah! I call myself the rogues' chamberlain, taking them from a wicked world and putting them quietly at rest. When he who signs the warrant for their exit, and, thinking closely what we all are, 'tis bold writing, i' faith—must some day die, too, when the ermine tippet must, at some time, lie down with the hempen string, it is, methinks, a humorous way of punishment, this same hanging."

"I tell thee, Jacques Tenebræ," cried the priest, "thy coarse faculties, made familiar with such scenes, can not appreciate their awfulness—their public use. The example that —"

“Ho! hold there, Father—example! ’Tis a brave example to throttle a man in the public streets; why, I know the faces of my audience as well as Dominique did. I can show you a hundred who never fail at the gallows’ foot, to come and gather good example. Do you think, most holy Father, that the mob of Paris come to a hanging as to a sermon—to amend their lives at a gibbet? No; many come as they would take an extra dram; it gives their blood a fillip—stirs them for an hour or two; many, to see a fellow-man act a scene which they must one day undergo; many, as to puppets and ballad-singers at the Point Neuf; but, for example, why, Father, as I am an honest executioner, I have in my day done my office upon twenty, all of whom were constant visitors of years’ standing at my morning levees.”

“Is it possible?” asked the monk.

“Believe the hangman,” answered Jacques Tenebræ.

“And thou wouldest punish no evil-doer with death?” inquired Father George.

“As I am an honest minister of the law, and live by the rope, not I, for this sufficient reason; nature having made death the punishment of men, it is too good a portion for rogues; the more especially when softened by the discourse of thy brotherhood.”

“And thou wouldest hang no man?” again asked the friar, with rising wrath.

"Though I speak it to my loss," cried Jacques, "not I." Here the conference ended.

"Every execution," says Dr. Lushington, in Parliament, "brings an additional candidate for the hangman."

"Woe to society," exclaims Lepelletier in his report to the National Assembly, "if, in that multitude which gazes eagerly on an execution, is found one of those beings predisposed to crime by the perverseness of their propensity. His instinct, like that of the wild beast, awaits, perhaps, only the sight of blood to awake; and already his heart is hardened to murder, the moment he is quitting the spot wet with the blood which the sword of the law has shed."

The Hon. Edward Livingston, one of America's ablest jurists, who labored earnestly to modify the harsher features of our penal codes, relates the following melancholy example of the truth of the principle we have now under discussion :

"John Lechler was executed at Lancaster, Pennsylvania; and while one old offense was atoned for, more than a dozen new ones were committed, and some of a capital grade. *Twenty-eight* persons were committed to jail on Friday night (the day of the execution), for divers offenses, at Lancaster, such as murder, larceny, assault and battery, etc.; besides, many gentlemen lost their pocket-books, though the pickpockets escaped, or the jail would have overflowed. In the evening, as one Thomas Burns, who was employed as a weaver in the factory near

Lancaster, was going home, he was met by one Wilson, with whom he had some previous misunderstanding, when Wilson drew a knife and gave him divers stabs, in sundry places, which were considered mortal. Wilson was apprehended and committed to jail, and had the same irons put on him which had scarcely been laid off long enough by Lechler to get cold. It appeared, on inquiry, that Wilson was one of the crowd."

"Very lately, in the State of Ohio," says Mr. Rantoul, in his report to the Massachusett Legislature, in 1836, "on the day on which a man was executed for the murder of his wife, under circumstances of particular cruelty, another man, near the place of execution, murdered his wife in the same manner; and this is by no means the only instance where the crime seems to have been directly suggested by the punishment intended to prevent it."

We may cite another instance to illustrate the fallacy of the idea that the death punishment prevents crime; on the contrary, we have abundant evidence to support the proposition that capital punishment increases those very crimes which it is supposed by many to prevent.

"A man, by the name of Strang, had been convicted of a foul murder committed on Cherry Hill, in Albany, by shooting, in cold blood, and for the vilest purposes, Mr. Whipple, an enterprising and worthy citizen. Levi Kelly, a farmer of the town of Otsego, living between sixty and seventy miles from Albany, heard of the day when Strang was to

be executed, and soon after expressed to his neighbors a determination to be present at the execution. I have been informed that he had then never seen a man put to death. Kelly was a man of respectable connections, and, I believe, of correct morals; at any rate, he was not distinguished for immorality of any kind. He was, however, known to possess very vindictive passions. He went from Otsego to Albany for the sole purpose of seeing Strang executed. On his return, he seemed entirely engrossed by the exhibition he had witnessed. He talked of nothing else on the road and at the public houses where he stopped for refreshment.

“A man lived in Kelly’s house by the name of Spafford, with whom he had had some little difficulty. In less than a fortnight after Strang was hung, an altercation occurred between Kelly and Spafford, when Kelly seized a loaded gun and shot Spafford through the heart. For this offense he was tried, convicted, and executed. There was not a particle of evidence that Kelly was insane at the time he perpetrated the horrid act. Here, then, was a case where the spectator hastened to commit the same offense, and with the same weapon, for which he had just seen the terrible punishment of death inflicted.

“On the evening of the day on which Kelly was hung, a man by the name of Cooke, in the neighborhood of Cooperstown, *who was present at the execution*, committed suicide by hanging. Now, may not the philosophical inquirer be permitted to indulge the conjecture, that the public execution of Strang, instead of tending to preserve life, led to the destruction of *three other lives?*”

We might cite many instances showing that the gallows instead of repressing crime absolutely incites the commission of it. We might also introduce newspaper accounts of executions, with all their horrid and disgusting details; but the repetition of these shocking occurrences can subserve no good purpose—certainly not the one we have in view. There are, however, some good points in the subjoined article, which we clip from the *New York Tribune* (1867). It was suggested by the hanging of three men in Cincinnati, one of whom, with more propriety, would be termed a boy, being but fifteen years of age. Their names were Aulgas, Goetz, and Shea. The *Tribune* remarks :

“ We remember a kind-hearted old man who was wont to relate how one fine morning he rode accidentally into a town in which an execution, as he was only then and there informed, was about to take place. ‘ I put the braid on,’ said he, in his homely way, ‘ and I was out of that town in less than ten minutes.’ This was somewhat different from George Selwyn’s taste. He had gone over special to Paris, to witness Damien’s racking; and, after all, the crowd was so great that he could not get near the scaffold. Upon his explaining his grievous disappointment to a French soldier, that polite warrior cried out at once: ‘ Make way for Monsieur! He is an Englishman and an amateur! ’ The amateurs of the gallows are not all dead yet; and many of them experience Mr. Selwyn’s difficulty without encountering an equally polite official. The unlucky persons who would enjoy the spectacle most are the

very ones who are most sedulously kept out. Thus upon the execution of Aulgus, Goetz, and Shea, the other day, at Cincinnati, the sacrificial solemnities were much disturbed by thousands of enthusiastic amateurs, who howled for admission to the jail-yard, and who howled in vain. They danced, they raved, they swore, they pleaded for their share of the fine moral drama going on inside; but they were snubbed by sheriffs, and they were sniffed at by policemen, until they are said to have grown absolutely 'ferocious' for the religious instruction of the rope, which was strictly monopolized by about one hundred and fifty disciples. With three to hang, they might at least have hanged one outside as just a taste, a morsel, a sop, a tub to the whale, a specimen, a solace just a little better than nothing. But they didn't. The one hundred and a half constituted a kind of a close corporation of the faith of the cervical fracture. Many were called but few were chosen, which was fun to the few but misery to the many. The clergymen in attendance should certainly have gone out and made little speeches, describing the inside mysteries to the mob. It would have been pleasant and profitable to have direct intelligence, from eye-witnesses, communicated with all possible celerity. Mobs are not very sweet-tempered at the best; and we fear that the 'thousands' on this occasion went home with more whisky in their stomachs and more sin in their hearts than could possibly have been good for them. What made the matter all the worse on this occasion was, that a new gallows of peculiarly interesting construction was employed—a machine which is described as a model of art in its own fascinating way. 'It consisted,' we are told, 'of a platform with a double door-trap, which fell upon the touch

of a pedal communicating with a lever below. A stout beam ran across the gallows, and to this the ropes were attached.' It was erected under a large tent or pavilion. A patent gallows, three ropes, and a pavilion! No wonder the excluded mob was mad!

"Then, again, the conduct of the condemned men would have been like witnessing a sensational drama, such as the multitude delight in. Goetz cried out, 'Heads up, boys! Let us die like men!' 'Case danced forward laughingly, and had to be restrained for decency's sake.' This reminds us of the speech of the hardened boy that he wanted 'to die by two o'clock, to be in time for the train,' of Macpherson's *Farewell*:

'Sae rantingly, sae wantonly,
Sae dauntingly gaed he:
He play'd a spring and danc'd it round,
Below the gallows-tree.'

"'We'll die like men,' said Aulgus, in response to Goetz's appeal. All this is very frightful. The priests furnished the piety, and the men furnished the pluck—one might have hoped that the distribution would have been a little different. Perhaps it was as well that the populace was kept outside. They would only have seen, if they had been admitted, how easy it is for bad men to die a shameful death, without fear and without flinching. Most persons, good or bad, die decently when death is inevitable; and it is not true, as a general rule, that those who are executed exhibit any terrors particularly distressing. These three culprits suffered for the crime of murdering a clerk for the sake of his money. But the same dissolute course of life which had educated them for murder, hardened them for the

gallows; and the dull, brutal, besotted soul, which kills for filthy lucre, is not of a nature to experience any terror at the prospect of death and judgment. We object to these executions, because they are not even the examples which they pretend to be. A man with a homicidal heart does not, day by day, plan a special gratification of the murderous instinct; he succumbs at last to temptation and opportunity; and when these are too strong for him, they are also too strong for the dread of a possible retribution. He does not weigh the chance of the gallows at all when he has determined to strike. If he kill in chance-medley, his apprehensions are certainly no quicker. It is the special vice of his character that he is not in the habit of weighing consequences — how then can the fear of the gallows govern his actions more than any other fear? The fault is in his reason, and in his perverted faculties — how then shall reason guide him even under the influence of a rational fear? How specially shall it guide a boy like Case, not fifteen years old, and with the vices of fifty? There is nothing better settled than that the love of crime, and the gratification of passion, is stronger than the fear of the gallows. The experience of mankind has deprived us of our best argument in favor of it; but we go on hanging murderers because we do not know what else to do with them. Some time we may discover a better mode of disposition."

Rev. Enos G. Dudley was executed at Haverhill, New Hampshire, for the murder of his wife, on the 23rd day of May, 1849. The next execution took place about nineteen years after; Samuel Mills being executed at Haverhill (same place), May 6th, 1868. On the *very next evening* after this execution, Thomas

Brown and wife, living a short distance from the scene of execution, were murdered for their money; clearly establishing the important fact, that the death punishment does not prevent those crimes which it seeks to repress.

Instances might be multiplied, clearly illustrating the well-attested historical fact, that all forms of punishment, by which mankind have suffered death as an expiation for their offenses, have fallen entirely short of the object claimed, viz., the repression of crime; that the ax, the stake, and the rope, have all accomplished their bloody work without securing the results for which these barbarous instrumentalities have been employed.

The law of capital punishment, when executed, can have no other effect upon the criminally-inclined than to arouse the bloody instincts, and to excite those baser propensities which are the dark precursors of bloody deeds. The very spirit of the gallows is infectious. Men have been known to return home from executions and deliberately hang themselves. Boys have been known, after attending an execution, to inflict the same cruelty upon animals. And instances might be cited, where children have been strangled by the rope, in the hands of boys, in imitation of the diabolical proceedings which they had just witnessed. The testimony is overwhelming, that the gallows ever incites to crime, and is, in no case, promotive of virtue. The glaring wickedness of this odious law, has drawn upon it an earnest con-

demnation from some of the best and wisest men who have ever lived. The *Rev. Theodore Parker*, whose whole life was singularly pure and blameless, could not conceal his horror of so barbarous a law. He says: “*The state teaches men to kill.* If you destroy the gallows, you carry one of the strong outposts of the *devil*.”

“Sanguinary laws are very bad symptoms of the distemper of any state, or at least of its weak constitution.” So said the great *Blackstone*.

“Let there be no rubries of blood,” said *Lord Bacon*.

Dr. Southwood Smith declared that the “system of capital punishment was worthy only the rudest savages, barren in expedients, and pursuing their object by the shortest course:”

The *Hon. Robert Rantoul*, upon the moral effects of the gallows, remarks: “As it is now perfectly well-established, that the private avenger stays his hands the more readily when the law ceases to deal out vengeance, and that the subject reveres God’s image in his fellow-man the more devoutly when the law displays no longer to his view its wholesale slaughters; as it is proved that we need not violate the Divine command, *thou shalt not kill*, in order to protect society against the increase of crime; nay, that the blood we shed will but cause the shedding of more blood in an endless, vicious progression, is it not natural to pause and inquire whether the struggle of one of our fellow-creatures is a spectacle

of so great a moral beauty, such an exercise of the fine feelings of nature, that society must provide for its occasional gratification, a *choice* and *private* exhibition, even at the expense of the infinite evils which flow from it as implicitly as crime begets crime?"

Said *Montaigne*, "I am of the opinion that hanging is an advantage only to the executioner, who is paid for putting men to death. If punishments are intended for the benefit of society, they should be made useful to society."

"Time and reflection," said Vice President *Dallas*, "have confirmed the opinion cherished by me for many years, that in our country, at least, no just cause exists for the infliction of the death punishment; and that its abolition will hereafter be looked upon as evidence of the moral character of nations, as they shall successively blot it from their criminal code."

We might continue to cite the concurrent opinions of various statesmen and jurists against the punishment of death as a moral lever in the repression of crime, but to the student of criminal history, cumulative evidence will be found in support of our views on this point. Let it be duly considered.

In this chapter we have thus far considered the effects of capital punishment as connected with those individuals predisposed to crime. Let us now briefly consider its effects upon the virtuous and

good. Any statute which rests upon the passion of *revenge*, and whose execution is but the exemplification of the law of retaliation, must necessarily disturb the moral element of society, and move to compassion for its victims the benevolent feelings of the Christian person. As a revengeful exemplar, the gallows stands unrivaled. It is but the dark and bloody spectre of a barbarous age. It is the brutal assailant of public virtue and private feeling. It *sometimes punishes* the criminal, but *more generally it tortures* the innocent and the good. The criminal, awaiting execution on the morrow, may *sleep* under the very shadow of the gallows, while the virtuous and benevolent may wrestle, in agony and tears, through a night of horrors, in anticipation of the terrible realities of the coming day. The letter of Mrs. Elizabeth Cady Stanton, which we here insert, conveys, in forcible yet touching language, her own experience:

NEW YORK, August 1st, 1868.

MARVIN H. BOVEE—*Dear Sir* :— You ask me if I believe in capital punishment. Indeed I do not. When men are dangerous to the public, they should be imprisoned; that done, the remaining consideration is the highest good of the prisoner. Crime is a disease; hence our prisons should be moral seminaries, where all that is true and noble in man should be nurtured into life. Our jails, our prisons, our whole idea of punishment is wrong, and will be until the mother soul is represented in our criminal legislation. It makes me shudder to

think of the cruelties that are inflicted on criminals in the name of justice, and of the awful waste of life and force—of the crushing out of hundreds and thousands of noble men and promising boys in these abominable bastiles of the nineteenth century.

As to the gallows, it is the torture of my life. Every sentence and every execution I hear of, is a break in the current of my life and thought for days. I make my son the victim. I am with him in the solitude of that last awful night, broken only by the sound of the hammer and the coarse jeers of men, in preparation for the dismal pageant of the coming day. I see the cold sweat of death upon his brow, and weigh the mountain of sorrow that rests upon his soul, with its sad memories of the past and fearful forebodings of the world to come. I imagine the mortal agony, the death-struggle, and I know ten thousand mothers all over the land weep, and pray, and groan with me over every soul thus lost. Woman knows the cost of life better than man does. There will be no gallows, no dungeons, nor needless cruelty in solitude, when mothers make the laws. God bless you in your noble work.

I have felt so much on this subject that I have often said to my husband, if there is such a thing as the transmigration of souls, mine has been in some tortured prisoner, for, ever since I began to think, I have felt the most intense sympathy for the inmates of our jails and prisons. When I was a little girl, twelve years old, there was a public hanging in the town where I lived. From the day the man was placed in our county jail he occupied all my thoughts. I went to see him every day, taking him flowers and fruit, cakes and candy; and

knowing the jailor's wife she would often let me in the cell to talk and read to him. He was as gentle and tractable as a child; and, as the awful day approached, I felt that I could not let him die; and as every body outside called him a horrible wretch, I saw that he could only be saved by some special interposition, and, fearing he was too wicked for Heaven to make any, I decided to do it myself. I watched the building of the gallows on a distant hill, and decided at the last to cut the rope, so that when he fell it would break. So on the morning of the day I hastened early to the spot. There was no rope there, and nothing that I could do. Oh! how I wept, and prayed, and wondered what I could do on that cold December morning. At length I heard the distant music,* saw the military surround the gallows, saw the poor man ascend it, heard the prayer, saw the death-struggle, and in anguish hurried home, and there I lay for many weeks in a terrible fever; and every execution I now read of in our public journals, brings back that terrible memory.

Whenever you visit our legislature, having in view the modification of our penal code, I will gladly do all in my power to help you banish that relic of barbarism from our land.

Sincerely yours,

ELIZABETH CADY STANTON.

* Public executions in this country were formerly conducted with solemn parade. The criminal, with the officials, the clergy, a military escort, a band of music, discoursing death marches and funeral dirges, the muffled drum, the coffin, the rabble of men and boys, constituted the solemn pageant, the exhibition of which was supposed to deter the commission of the crime of murder.

The law of capital punishment possesses many vulnerable points, and none more weak than the one which essays to secure an impartial jury to determine the innocence or guilt of the party accused. The peremptory challenge, which demands of the juror an acknowledgment of profound ignorance on his part, of the facts connected with the case which he is called upon to determine, or, at least, the affirmation that he has formed no opinion as to the guilt or innocence of the party arraigned, coupled with the confession that he has no conscientious scruples in regard to taking human life, has no other effect than to exclude from the jury-box that class of men who, above all others, would be best qualified to hold the scales of life and death. To place the matter in a clearer light, we state it thus: The law says to the juror, "Have you formed an opinion as to the guilt or innocence of the party arraigned?" Now, we are a reading people. Whenever, or wherever, a heinous crime is committed, a complete narration of the facts connected with the transaction, is borne upon *electric wings*, and, through the channels of the daily press, is placed before every intelligent citizen. But the law of capital punishment, when it has found *twelve* men who are so profoundly ignorant as to have known nothing of the case before them; and when, additional thereto, the law has found twelve men who possess so little benevolence as to have no objection to the strangling of a human being, then the law has found twelve

men who are competent to try a question involving human life. Thus the peremptory challenge *drives* from the jury-box the very men who should have been "*kept in*;" and "*keeps in*" the very men who should have been *driven out*. It is not strange, then, that when the community are looking for the verdict of *guilty* they are startled with the verdict of *acquittal*; and when looking for *acquittal* they learn, instead, that conviction has taken place.

Thus the law of capital punishment often defeats itself. Its very severity renders its enforcement uncertain. Its barbarity so operates upon the moral element of man's nature, that juries, even thus selected, oftentimes prefer to rest under the milder imputation of screening the guilty, than the graver accusation of bathing their hands in human blood.

Said Canning, the great English statesmen: "It is vain to suppose that juries will enforce laws which are repugnant to the best feelings of our nature."

Upon this point Cassius M. Clay remarks: "The experience of mankind has fully proven, that a largely bloody code of laws has not been the most effectual to prevent crime, while the growing objections to capital punishment, and the *positive refusal of juries to convict in many instances*, warn us that some other remedy ought to be tried."

This view of the case is also sustained by Henry Vincent, the distinguished English liberal, whose public addresses upon various questions, during the

past few years, have been received with delight by the American people. We append his letter.

REGENT'S PARK, LONDON, N. W.

MY DEAR SIR:— My opinion on the question of capital punishment will not have much weight, for I have not had judicial or legal experience. But, as far as I can judge, I am of opinion that the punishment by death does not reach the end at which it aims. It renders conviction uncertain at the time of trial—it creates in too many cases a dangerous sympathy for the criminal—and it lessens instead of increasing the value of human life. It is opposed, in my judgment, to the entire spirit of the Gospel, and I am anxious to try the experiment of its abolition. So long, however, as the punishment by death exists, I am opposed to the attempts constantly made to save the lives of individual murderers. Let the law be changed to some certain and irrevocable punishment, and let us see if there will not be fewer murders without death punishment than with it.

Thanking you for all your earnest efforts to humanize and Christianize the criminal code of nations, I am most respectfully and sincerely yours,

HENRY VINCENT.

M. H. BOVEE, Esq.

The reasons, in a condensed form, which the author of this volume would assign for his opposition to the death punishment, may be found in the subjoined letter addressed to the Governor of Pennsylvania, in behalf of Alfred Alexander, at *that time* under sentence of death in Philadelphia. The let-

ter first appeared in the *Inquirer* of that city, and was freely discussed by the local press. The letter received marked opposition from certain *theologians* who believe the gallows to be a *divine* institution. We copy it as it appeared in the paper referred to, merely remarking that the criminal, in whose behalf it was written, *has not* as yet suffered death, and *probably never will* thus suffer, at the hands of any earthly tribunal.

[From the "Philadelphia Inquirer" of the 8th of Sept., 1868.]

We give herewith the letter addressed to his Excellency, Governor Geary, by the Hon. Marvin H. Bovee, of Wisconsin, in behalf of Alfred Alexander, who was sentenced to be hung at the Moyamensing Prison to-day, but whose respite of a fortnight since has been extended by the Governor until another warrant for his execution shall be issued. This letter of Mr. Bovee, no doubt, strongly influenced the Executive in further respiting Alexander, and will be read with great interest by the public:

EAGLE, WIS., Sept. 2nd, 1868.

To his Excellency, Hon. John W. Geary, Executive Chamber, Harrisburg, Penn.

DEAR SIR:—My attention has been called to the solemn fact that, in the city of Philadelphia, a human life has been placed in jeopardy by the penal laws of your State. Through the press of that city, I

learn that Alfred Alexander, a colored man, having been placed upon trial for the murder of a fellow-creature, has been convicted and sentenced to die. I speak of it as a solemn fact, not that death is always a calamity, for people die every day, and to many it is a release from suffering; but it is a solemn reflection to know that government, in the name of justice and under the plea of necessity, will deliberately proceed to shock the moral sensibilities of a Christian people, by removing from earth, in a violent and brutal manner, and by a disgraceful death, an individual who, in God's own time, would have been removed from earth by the peaceful operations of natural law.

The court, in sentencing Alfred Alexander to violent death, did not startle the community with the introduction of any new principle, for the court simply affirmed what nature has already decreed, and from which decree there is no escape — for *all men must die*. The sentence of the court, if carried into effect, will simply accomplish by violent and disgraceful means, precisely the same result which would have taken place in the regular order of nature.

It is not my province, at this time, to inquire into the causes which induced the commission of this great crime which is charged upon Alfred Alexander, for the deliberate killing of one human being by another, is, indeed, a *great* crime. So says the State of Pennsylvan, through her penal laws, and

to illustrate the truthfulness of what the Commonwealth declares, deliberately repeats the crime by *murdering the murderer*; forcibly reminding one of the temperance lecturer who traveled in company with his inebriate brother, whom he introduced in the lecture room in an intoxicated condition as a frightful example of the evils of intemperance. The parallel is complete. Government *judicially* and shockingly murders the criminal as a frightful example of the evils of committing the crime of murder.

The criminal, who finds himself confronted with the gallows, is rarely able to understand the distinction between his own crime and the crime which the state proposes to commit in strangling him to death. To us there is a great moral difference, and that difference is not in favor of the state; for while the criminal may attempt to justify or excuse his crime by various pleas, however puerile or specious they may appear, the state can offer *none* in justification of her brutal act. The criminal may plead *drunkenness* in extenuation of his crime, but the state, in hanging him, can make no such excuse, for the state never "*gets drunk.*" The criminal may plead *love of money* in palliation of his guilt, but the state can make no such plea, for the state is *rich*. He may plead *weakness* in extenuation of his conduct, but the state can offer no such excuse, for the state is *strong*. He may plead *ignorance* as a mitigating circumstance of his crime, but the state can make

no such plea, for the state has *wisdom* and *knowledge*. The criminal may plead the inability of his moral power to control, for the time being, the baser propensities of his nature, hence his crime. Will the state of Pennsylvania admit that her sense of moral right is *ever* overborne by the passion of revenge?

I have no official or personal acquaintance with you, nor do I know the person whom your laws have condemned to death. I am the resident of a State a thousand miles distant from the spot where your law, through its chosen officer, is to strangle Alfred Alexander to death. He may be guilty, poor, degraded, friendless, homeless; he may be despised, and even abhored for the crime which he is said to have committed, but to me he is a human soul in misery; his life is threatened, and to save that life, poor and worthless though it may seem, how gladly would I perform a pilgrimage to his cell, walking the whole distance, with "peas in my shoes," to save the life of Alexander; not that his life would be of essential value to himself or his friends, but I would save his life that I might thus save your people from the responsibility of committing this great crime against humanity and against the Christian religion. I would save his life that I might guard your people against the commission of fatal mistakes. I would save his life that I might thereby repress the brutal lesson which an execution always inculcates. I would save his life that I might protect the virtuous and good from the terrible assaults

which they ever receive through these exhibitions of cruelty. I would save his life that humanity may not be outraged by a solemn mockery of justice. I would save his life that the Executive of the State may never have occasion, in future years, to reproach himself for “lost opportunities” of doing good. I would save his life for all these high moral considerations, and for the advancement of the Christian religion.

But, my dear sir, I am powerless to save this unfortunate being; for he is in the custody of the law, of which you are the chief executive officer, and I but an humble citizen. You can accomplish with the stroke of your pen that which I should fail to secure by the painful pilgrimage I would gladly undertake, could it be fruitful of results.

The applications for mercy which are constantly besieging the Executive Chamber in every capital conviction, must be to you convincing evidence that the law of “blood for blood” is no longer respected by the better informed and more humane classes of society. Relic of a barbarous age, it will be no longer sustained by the higher wisdom and enlightened policy of the nineteenth century. The terrible struggles which are witnessed in every community on this question, between the merciful element on the one hand and the retributive element on the other, gives the assurance of the early “blotting out” of this brutal law. Its enforcement is attended with the utmost difficulty. The State of Pennsyl-

vania, in abolishing public executions, has confessed that she is *ashamed* to execute so vile a law. Where, once, all were invited to the bloody entertainment, but few are now admitted. *Force* is now employed to keep the people out, while the sheriff is *forced* to *force* the spirit of his brother from its earthly tene-
ment.

Is this the exemplification of the beautiful lan-
guage of the Saviour, when, in his approaching dis-
solution, he looked upon his murderers and touch-
ingly exclaimed, “Father, forgive them, for they
know not what they do!” Do the advocates of the
death penalty in Pennsylvania know what they are
doing? *If they do*, how can they expect forgive-
ness? Jesus asked forgiveness for his murderers
for the reason that they were *ignorant* of what they
were doing. Can you, my dear sir, or any of your
people, plead *ignorance* of what you are doing, when
taking the life of Alfred Alexander?

I have been for a long time connected with the
cause of penal reform, and have seen many years
of public life, and am most fully aware of the *qua-
ter* from which the gallows receives its principal
strength and support. It can not be charged upon
the Jewish teachers, for it is a singular fact that
many of the Hebrew churches are teaching a *pure*
Christianity, while very many of the Christian
churches are teaching Judaism. To this latter
class I would kindly advise an early return to the
“Mount” upon which Christ delivered his sermon,

from which they seem to have strayed in their endeavors to collect the fragments of the *first* tables of stone which have been so long superseded by the *second* tables, typical of the "better covenant." If their way does not seem clear in retracing their steps, permit me to suggest the *careful* and *prayerful* perusal of the fifth chapter of Matthew. It will assist them in finding light, and will strengthen them in their better purposes.

No execution is ever properly conducted without a clergyman. He is as necessary to the "bloody drama" as the hangman. It is a singular circumstance, however, that those of our gospel teachers who are *opposed* to the punishment of death, *invariably refuse* to take part in these disgraceful proceedings, and the *religious ministrations* are left wholly in the hands of those clergymen who believe the gallows to be a divine institution. Do these *religious* teachers ever repeat that portion of Christ's teachings which declares that, "if ye forgive men their trespasses, your heavenly Father will also forgive you; but if ye forgive not men their trespasses, neither will your Father forgive your trespasses?" Do they ever feel the force of those beautiful lines, "*That mercy I to others show, that mercy show to me?*"

Have you, my dear sir, attempted to analyze the feelings which, even now, pervade the breast of the sheriff, upon whom is forced the unpleasant duty of hanging Alfred Alexander? Would you be will-

ing to exchange places with him just long enough to relieve him of that unpleasant duty, which, if performed, must always be to him a hateful memory? I feel that he shrinks from it, and that his whole soul revolts at the commission of so brutal an outrage upon a defenseless though criminal man. I *know* a sheriff, and from his own lips I had the story, who, by the stern mandate of law, was compelled to hang two young men, both minors, and this after they had been *converted* and made a "*profession of faith*," which united them to the same church to which he, the sheriff, belonged. He felt that he could not perform this bloody work—that he could not *murder* his own brothers, though the law commanded it. He fully determined to resign his office rather than commit the atrocious crime, but was dissuaded from his noble resolve by eight Christian clergymen, who urged him to perform the deed. He finally consented. *Two* of these *eight* clergymen officiated at the gallows. The sheriff himself touched the fatal spring, the drop fell and he turned away in an agony of tears. Looking at the scene a few minutes later, he beheld these clergymen with arms *akimbo*, with *tearless* eyes, and muscles unmoved, looking down through "*the trap*" upon the quivering forms of the young men, watching for the last faint struggle which should announce that their *spirits* had been *forced* from their *earthly tenements*. It was a trying moment. *Religious fervor* sustained the clergymen; love of

humanity "broke down" the sheriff. Not that gallows-believing clergymen are less susceptible to impression than other men, but they possess a *wonderful control* over their emotional nature. It is true that "Jesus wept" over suffering humanity, but He never attended but *one* execution, and He the victim.

The sheriff to whom I allude has become a miserable and almost heart-broken man. He separated himself from the church to which he belonged. He lost faith in the *Christian* religion as expounded by such Gospel teachers. He became reckless and dissipated, and his present and future life has become saddened by the horrible realities of that hour. The law did not punish the young men, for the attending clergymen averred that they were *converted* and had gone to *heaven*; but the law *did* punish, and *still* punishes, the innocent official.

My dear sir, please relieve the sheriff of the unpleasant duty which the law is endeavoring to force upon him. He desires that you should do this. I *feel* this to be so. Do not force him to commit an act which you yourself would not perform. To force him to do so, would not be in the spirit of that "golden rule" which "urges that whatsoever ye would that men should do unto you, do you even so to them." Speaking for myself, allow me to assure you, that no circumstances could ever compel me to the commission of so brutal an act. Had you the power to tender me, as a consideration for such a

service, the whole material wealth which lies encompassed within the boundaries of your noble State, it would prove not the slightest temptation to the commission of so great a wrong. That I desire *riches* is true, indeed; that I am striving for *riches*, I will confess; but they are the *riches* that come from the accumulation of kind actions, loving words, soul sympathies, noble deeds, and the *living* realities of a “pure and undefiled religion;” these are the *riches* I crave — *riches*, protected by the holy memories arising from the acts of a true and noble life — *riches* that will not perish at the portals of the tomb, but in resplendent glory will forever shine amid the *realities* of the eternal world.

I am aware, my dear sir, that you represent the executive and not the law-making department of your State government, and are not responsible for the *barbarous* law of capital punishment; but I am also fully aware that by the organic law of your State, the prerogative of mercy is placed within your keeping, and that the exercise of this prerogative is just as clearly and indisputably your right, as it is the right of juries to *convict* and of courts to *sentence*.

The life of Alfred Alexander, which was given him by his Creator, has been assailed by the legislative and judicial powers of your State. He is entitled to long life by the laws of his being, which laws are the laws of God. He asks you to maintain the *holy* law of God, by suspending the *unholy* law of man. His life is threatened. He seeks refuge in

the Executive Chamber. You are the guardian of that department. May you prove yourself the guardian of his life, for

“The quality of mercy is not strained;
It droppeth as the gentle rain from heaven
Upon the place beneath: it is twice blessed;
It blesseth him that gives and him that takes;
‘Tis mightiest in the mightiest; it becomes
The throned monarch better than his crown.”

The exercise of this heavenly prerogative will be a priceless gem in the diadem which shall crown the truly Christian Executive, “when time shall be no more.”

I am, dear sir,

Yours, very faithfully,

MARVIN H. BOVEE.



CHAPTER IX.

PROGRESS IN PENAL LEGISLATION.

"Great good has been done by the amelioration of the criminal code."—DEWITT CLINTON.



HE efforts now making in various countries of the civilized globe, for the modification of the harsher features of the existing penal laws, are but the continuation of former struggles between the better dictates of the human heart and the baser passions of the human mind,—struggles which have been observable in all ages of the world, wherever organized governments have been known among men.

Far back in the history of the past, we read of conspicuous characters, like Sabachus, Porcius, and Cicero, standing boldly forth in the advocacy of the abolition of cruel punishments, and whose influence produced a marked effect upon the public sentiment of those times. .

"In ancient Egypt," says O'Sullivan, in his report to the New York Legislature, "under Sabachus, for a period of fifty years, as we are informed by both Herodotus and Diodorus Siculus, no capital punishments were inflicted; those penalties being changed,

with much success, into stated kinds of labor, which example Grotius recommends to other nations."

"In the history of Rome," says another writer, "we find, as early as B.C. 553, a statute enacted, entitled *Porcia Lex*, or Porcian Law, which prohibited the infliction of the death punishment upon any Roman citizen, substituting exile in its stead. And we learn from the history of that empire, for a period of nearly *three centuries*, constituting its golden age, *that* statute prevailed; and was considered to be so just in its character, and so beneficial in its effect, that even Cicero, in the hight of his popularity as an orator, and of his influence as a statesman, was driven into exile to atone for his offense in violating the law by the infliction of the death punishment upon those who had been convicted as accomplices of Cataline, in a most blood-thirsty and treasonable design against the state."

And yet the voice of Cicero had been frequently raised against the death punishment. He says: "Away with the executioner and the execution, and the very name of its engine; not merely from the limbs, but from the very thoughts, the eyes, the ears of Roman citizens; for not alone the occurrence and endurance of all these things, but also the liability, the apprehension, even the mere mention of them, are unworthy of a Roman citizen and a free man."

In respect to the operation of the Porcian law, Montesquieu says: "The penal laws of the kings

and those of the ‘twelve tables,’ were nearly abolished during the Republic, either in consequence of the Valerian law, made by Valerius Publicola, shortly after the expulsion of the kings, or else in consequence of the Porcian law. The Republic was not worse regulated, and no injury was done to the police.” And Blackstone bears testimony in behalf of the Porcian law, which abolished capital punishment, in these words: “In this period the Republic flourished; under the emperors severe punishments were revived, *and then the empire fell.*”

O’Sullivan, in his report to the New York Legislature, thus speaks of the abolition of capital punishment in Russia:

“The Empress Elizabeth, of Russia, on ascending the throne, pledged herself never to inflict the punishment of death; and throughout her reign of twenty years, she kept the noble pledge. And so satisfactory was found its operation, that her successor, the great Catharine, adopted it into her celebrated code of laws, with the exception of very rare cases of offenses against the state. ‘Experience demonstrates,’ is the language of her ‘Grand Instructions,’ for framing a new code of laws for the Russian Empire, Article 210, ‘that the frequent repetition of capital punishments has never yet made men better. If, therefore, I can show that in the ordinary state of society, the death of a citizen is neither useful nor necessary, I shall have pleaded the cause of humanity with success. I said, in the ordinary state—for the death of a citizen may be necessary in one particular case—I mean when, though

deprived of liberty, he has still means and power left to disturb the national repose; a case which can never happen, except when a people loses or recovers its liberty; or in times of anarchy, when disorder and confusion usurp the place of laws. But while those laws bear quiet and peaceful sway, and under a form of government approved by the united voice of the nation, in a state defended against enemies from without, sustained by the firm basis of power and general sanction from within, and where authority is lodged in the hands of the sovereign, in such a state there can be no necessity for taking away the life of a citizen.'"

The twenty years' reign of the Empress Elizabeth gave the people a more excellent pattern than that of all the pomps of war, victory, and devastation, held forth by the most glorious conquerors.

"From that day to the present, there have been but *two* occasions on which the punishment of death has been inflicted in Russia,—once, under Catharine, on the person of a notorious brigand chief and rebel, Pongatcheff, who had long defied the government, and committed great atrocities and devastation. And, again, at the commencement of the reign of the Emperor Nicholas, on the suppression of a rebellion which, breaking out in the streets of the capital, filled them with blood, and was only suppressed by an extraordinary display of personal heroism on the part of the young Czar himself. Five of the thirty leading nobles engaged in this insurrection were put to death, rather as a political measure than as one of ordinary social justice. By an edict, in the early part of his reign, he extended

to Finland (before under the Swedish laws) the same wise principle of the *abolition* of the punishment of death, which had been found to work so successfully throughout the rest of the Russian dominions.

“The public sentiment is unanimous in Russia in support of this principle which remains, and will forever remain, unchanged, as it was established by Elizabeth and Catharine.

“The Count de Sequr, on his return from the embassy at St. Petersburgh, in a letter published in the *Moniteur*, in June, 1791, declared that Russia, under the operation of this law, was one of the countries in which the least number of murders were committed; adding, that Catharine herself had several times said to him: ‘*We must punish crime without imitating it; the punishment of death is rarely any thing but a useless barbarity.*’”

A notable instance of a successful experiment in the abolition of capital punishment, is related in a work on the Punishment of Death, by Thomas Wrightson, published in London, in 1837. Sir James Mackintosh had been Recorder of Bombay, in India, for *seven* years; and availed himself of the opportunity to test by experiment the propriety of the humane reform, for which he was so earnest an advocate. In his farewell address to the grand jury of the Supreme Court at Bombay (July 20th, 1811), he makes the following statement of the result of his observations and experience:

“Since my arrival here, in May, 1804, the punishment of death has not been inflicted by this court. Now, the population subject to our jurisdiction, either locally or personally, can not be less than two hundred thousand persons. Whether any evil consequence has arisen from so unusual (and in the British dominions unexampled) a circumstance as the disuse of capital punishment, for so long a period as *seven* years, or among a population so considerable, is a question which you are entitled to ask, and to which I have the means of affording you a satisfactory answer.

“From May, 1756, to May, 1763 (seven years), the capital convictions amounted to 141, and the executions were 47. The annual average of persons who suffered death was almost 7, and the annual average of capital crimes ascertained to have been perpetrated was nearly 20.

“From May, 1804, to May, 1811, there have been 109 capital convictions. The annual average, therefore, of capital crimes legally proved to have been perpetrated during that period, is between 15 and 16. During this period there has been no capital execution. But as the population of this island has much more than doubled during the last fifty years, the annual average of capital convictions ought to have been *forty* in order to show the same proportion of criminality with that of the *first seven* years. Thus it will appear that the capital crimes committed during the *last seven* years, with no capital execution, have, in proportion to the population, not been much more than a *third* of those committed in the *first seven* years, notwithstanding the infliction of death on *forty-seven* persons during that period.

“This small experiment has, therefore, been made without any diminution of the security of the lives

and property of men. Two hundred thousand men have been governed for *seven* years *without a capital punishment, and without any increase in crime.* If any experience has been acquired, it has been safely and innocently gained."

In regard to Belgium, Edward Duepetiaux, Inspector-general of the Prisons in Belgium, shows, in his "Statistics of the Death Penalty," that the yearly average of murders in *nineteen* years, ending with 1814, with 28 executions a year, was *twenty-one*. In the next 15 years, with less than *five* executions a year, not quite *eight*, and in the five years ending with 1834, with *no executions*, only *four murders*. He farther remarks, that "the punishment of death is useless and unfit as a means of prevention, the object of general, and continually-growing repugnance, and can be replaced by safeguards more efficacious;" adding, that to combat and refute these propositions, "denial will not suffice, but facts will be met with facts, figures with figures, and it must be proved that the laws of blood still find their justification in their necessity."

The philosophy of penal legislation has in no country been more carefully investigated than in Italy. The Marquis Beccaria,* in 1764, published a work entitled, *Dei Delitti e delle Pene*, which produced a marked effect upon the public sentiment of that day. The *judicial* murder of Calas, at Tou-

* Cesare Bonesano de Beccaria, born in 1738, died in 1794.

louse, which caused a European sensation, a short time prior to the publication of Beccaria's work, occasioned, without doubt, the publication of the work referred to. One of the French authors is said to have written to a member of the Milan Literary Society: "Now is the time to rise against religious intolerance and the exaggerated severity of penal legislation." Beccaria, who was a member of this literary club, and a zealous reader of French authors, especially Montesquieu, Helvetius, and Condillac, was thus incited to write the work referred to, and which has made him famous in the history of penal reform. This book, which its author stated he was induced to write through "love of literary fame, love of liberty, and compassion for the unhappy condition of mankind who were enslaved by many errors," exerted a powerful influence upon Italian public sentiment, and was translated into most of the European languages.

In Tuscany the experiment of abolishing capital punishment was tried with eminent success. The Grand Duke Leopold, coming into power in 1865, actuated by the wise and humane counsels of Beccaria, was induced to make a reform in the penal code. He recognized, as the legitimate objects of punishments, the reformation of the criminal and the prevention of crime, and promulgated the abolition of the death punishment in these words:

“We have resolved to abolish, and by the present law do abolish, forever, the punishment of death, which shall not be inflicted on any criminal, present or refusing to appear, or even confessing his crime, or being convinced of those crimes, which in the laws prior to these we now promulgate, and which we will have to be absolutely and entirely abolished, were styled capital.”

For the period of *twenty-five years* the domain of that royal reformer was unstained by a drop of blood *judicially* shed. Of the success of the experiment, we give the language of the Duke:

“With the utmost satisfaction to our paternal feelings, we have at length perceived that the mitigation of punishment, joined to the most scrupulous attention to prevent crimes, and also a great dispatch in the trials, together with a certainty of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of smaller ones, and rendered those of an atrocious nature very rare.”

Confirmatory of the beneficent result of the abolition of the death punishment in Tuscany for twenty-five years, M. Berenger, in his report to the French Chamber of Deputies, in 1840, says: “And the mildness of the penal legislation had so improved the character of the people there, that there was a time when the prisons of the Grand Duchy were found entirely empty. Behold enough to prove sufficiently, that the abolition of the punishment of

death is capable of producing the most salutary effects."

Edward Livingston, in speaking of this experiment in Tuscany, uses the following language:

"In Tuscany, during *twenty years*, the punishment of death was altogether abolished by the Grand Duke Leopold. Bonaparte afterwards had it restored. On comparing *three* successive periods of *twenty years* each, in the first period capital punishment existing, in the *second* period abolished, and in the third again restored, as above mentioned, it is found that *fewer* crimes and *fewer* murders were perpetrated in the *middle twenty years*, while no executions took place, than in either the *preceding* or *succeeding* twenty years while the scaffold was in use."

The restoration of the bloody code in Tuscany was an arbitrary act of Napoleon, and the reasons assigned by him for its restoration, are furnished by Louis Bonaparte, in a work published by himself. He states that in a conference at Mantua, relative to the sovereignty of Tuscany, which had been offered him by his brother, the Emperor, he expressed the desire to retain the mild laws under which it had been governed, which desire was refused by the Emperor in the following language:

"The interest of France is the point to which every thing must tend; codes, taxes, and conscription; every thing in your kingdom must be to the profit of mine. If I allowed you to make Tuscany happy and tranquil, all travelers from France would envy it."

In Tuscany the death punishment is now abolished by law, an act to that effect having been passed in 1859.

In Italy, Signor Vacca, the Minister of Justice, declared in the Italian Chamber of Deputies, at Turin, 1865, that he was in favor of abolishing capital punishment throughout Italy. And we are happy to add, that the countrymen of Beccaria, in the past year (1867), have carried to their legitimate conclusions, the principles of that remarkable reformer, and have declared against the farther use of the barbarous law of capital punishment.

“The publication of Beccaria’s work,” says John Macrae Moir, in his work on Capital Punishment, “encouraged not only in Italy, but throughout the whole of Europe, the advocates of the abolition of the death punishment, or, at least, its limitation to the gravest crimes. In Germany, the first example was set by Austria. The benevolent Emperor Joseph II. had his misgivings regarding the lawfulness of the death penalty, but did not venture on its abrogation. He, accordingly, in 1781 and 1783, gave orders in council that ‘passed sentences’ should not be carried into execution without his special mandate. These orders in council were kept secret, in order not to weaken the deterring influence of the law upon individuals predisposed to crime. Very few executions took place after 1781; but death punishment was not actually abolished before the promulgation of the new Penal Code of April 1787. The Emperor Francis II. re-enacted capital punishment, at first for high treason only, (1796), but afterwards for many crimes by the Code (Strafge-

setzbuch) of 1803. The emperor apologized, after his own fashion, for so doing, by a decree of the court, October 29, 1803. He could not help in the same decree, recognizing the fact that the *number of crimes committed had not increased since the abolition of the death punishment.*"

"In France," says the same writer, "two remarkable circumstances, with regard to legislation on death punishment, have taken place since 1830. Louis Phillippe was decidedly opposed to capital punishment. He discussed the subject with distinguished jurists, among whom was Berenger. When the dangers of a sudden abolition were considered, the king advised that capital punishment should be abolished for several crimes which were menaced by death in the code. He proposed that juries should be authorized to modify their verdict of guilty, by the addition of extenuating circumstances, in those cases in which they thought that death was disproportional to the guilt of the culprit. Hence sprang the law of 1832, by which death punishment for several crimes was abolished, and power given to juries to find a verdict with mitigating circumstances, even without a question being put from the bench relating to them. Such a finding had the effect of compelling the judge to mitigate the usual penalty.

"The second important enactment in France has been the abolition of the death punishment for the so-called political crimes. (Constitution of 1848, Article 5). In 1853 it was deemed necessary to remove every doubt respecting the continuance of the penal enactments which had reference to assaults on the Emperor. The law of June 10, 1853, enacts that attempts on the life of the Emperor shall be punished with death."

France, though boasting of some of the ablest reformers the world ever saw, has not made that progress in penal legislation which is observable in other countries of Europe. While the teachings of such men as Voltaire and Montesquieu, on penal law, have taken deep root in the hearts of the French people, and the public mind of that country is even now deeply impressed with the liberal views of such authors as Victor Hugo, yet the "Lex Talionis" is still deemed essential to the security and well-being of that empire.

Spain, though far behind France in all those elements which constitute a true civilization, has recently taken a bold step forward in the right direction. The queen having been dethroned in the recent revolution, the "Junta" immediately declared against the farther use of capital punishment, and the scaffold was publicly burned in the streets of Madrid by the populace; the proceedings being conducted in an orderly manner, and, as it were, in conformity to the wishes of the "Junta," which had thus publicly declared against the continuance of so barbarous a punishment.

Portugal, in its draft of a penal code, 1864, sets out with the admirable idea, that the object of all punishment should be the reformation of the criminal, but nevertheless adopted the death punishment; and then, being fully aware of the inconsistency, attempted to justify it by the assertion, that for criminals of such depravity as to exclude every

hope of reformation, the object of reform *must*, in the interest of society, yield to the indispensable object of *deterring*. In this draft of the code, capital punishment is not threatened for *political* crimes; and where there are extenuating circumstances the judge must pass a milder penalty; nor can capital sentence be passed upon minors under nineteen years of age. This draft of the code was very mild indeed; but we *now* have the better news, that Portugal has *virtually* blotted out the “bloody” law, thus giving evidence that there is in the hearts of her people, an inherent love of justice and humanity which must ere long place her in the very first ranks of Christian civilization.

The criminal codes of Germany seem to indicate that the increasing number of the opponents of the death penalty has exercised a marked influence upon the legislation of that country. As yet, however, the influence is not sufficiently strong to bring about the abolition. Probably no one individual, within the past century, has accomplished so wonderful a work in correcting the abuses which formerly existed in matters of criminal procedure in Germany, as Prof. Mittermaier,* of Heidelberg, recently deceased. There is yet great need of still farther modification of her penal laws. The penal code of Würtemberg still threatens death for some thirty offenses, almost equaling the old Mosaic code.

* Karl Josef Anton Mittermaier, born in Munich, in 1787, died in 1868.

It must be stated, however, that these codes, in some of their enactments, restrict the infliction of the death penalty, by decreeing that criminals under eighteen years of age (in Austria under twenty) shall not be executed; nor shall death be inflicted in any case where the evidence is purely circumstantial. In the code of Brunswick, the judges are permitted to remit the penalty in capital crimes, if attended with extenuating circumstances, and the result is that the death penalty is *virtually* abolished.

The year 1848 was an eventful one in the history of death punishment in Germany. A popular, but revolutionary movement, having in view the correction of many abuses in the judicial administration of the government, was inaugurated by the people, but failed, for the time being, in consequence of the too great readiness of the people to trust the oaths of sovereigns who are ready to *promise* in times of popular commotion, but *fail* to *perform* in times of public tranquillity. The National Assembly of Frankfort, over which Prof. Mittermaier presided, at this time laid down the principle that the abolition of capital punishment should be one of the fundamental laws of the nation; but the reaction which followed when tranquillity was restored to the public mind, led to the re-enactment of the death penalty, though the offenses menaced with that punishment are fewer in number than before the period alluded to.

In Prussia the draft of 1846, adopted capital pun-

ishment for only *one* offense, at the same time giving the judge the liberty of pronouncing or mitigating that penalty.

In Oldenburg, the death punishment has been abolished, and imprisonment for life has been substituted; and no desire is manifested to return to the old law.

In Bremen, the new draft (1861) retains capital punishment for murder *only*.

In Nassau, where the death penalty has been abolished since 1849, we find, from actual statistics, that *no increase* of crime has followed the abolition of that penalty. And the courts when questioned by the government, have uniformly recommended that the death punishment *should not be reinstated*.

In Switzerland, the death penalty is rarely enforced. In the cantons of Neufchatel and Freiburg, the penalty is abolished for all crimes; while in the remaining cantons the codes are so mild that it amounts to a practical abolition.

In Bavaria and Belgium, marked modifications of the former penal codes have been observable; and public sentiment is manifesting itself so strongly against the "barbarism" of the death penalty, that the *unconditional* abolition of that law may be looked for, within a very short time.

The Republic of San Marino abolished the death punishment in 1859, and the abolition has been attended with the most gratifying results.

In the Netherlands there is less progress noticeable than in any of the European States.

In Piedmont the march of legislation has been rapid, and the “blotting out” of the “extreme penalty” may soon be expected.

Denmark retains the law of capital punishment, but the perogative of mercy is so generally exercised, that a *practical* abolition has been very nearly attained.

In Norway an execution is rarely known.

Sweden was formerly characterized as harsh and severe in the judicial administration of her government, but since the accession of the Crown Prince, who, before ascending the throne, had spoken boldly against the death punishment, a great change has taken place in the criminal code, or, rather, in the enforcement of the penalty which it still retains. The king resolutely resists the pressure of his minister, to confirm capital sentences, and, in consequence, executions are exceedingly rare.

Thus we find that Continental Europe is making rapid progress in penal legislation, and but few years will elapse before the barbarous law of capital punishment will be stricken from the code of every nation whose experience has been referred to in this chapter.

CHAPTER X.

PENAL REFORM IN GREAT BRITAIN.

“It were to be wished that instead of cutting away wretches as useless, that we tried the *restrictive* arts of government.”—DR. GOLDSMITH.

NGLAND,” says a distinguished writer, “was the country which gave the first impulse to speculations on the principle and object of penal legislation; but it was by French and not by English authors, that the subject was first treated. Those French authors of eminence, that came to England in Queen Anne’s time, especially Voltaire and Montesquieu, could not but be struck with the working of the Constitution, and that well-preserved inheritance, national self-government, which conquered the Stuarts, survived the tempests of the Commonwealth, the Restoration, and the Revolution of 1688. Voltaire and Montesquieu both lived in England, both owed much to their personal intercourse with some of the great English statesmen of the time — especially the Earl of Shaftesbury and Lord Bolingbroke — both exercised a wholesome influence in reforming the penal legislation of their country, and enlightening mankind on the principles of legislation in general.”

Foremost, however, in practical reform, stood the great John Howard*—great in that singleness of purpose and unflagging perseverance which, in the face of intense and bitter opposition, secured most important and radical changes in the entire prison system of that country; confirming the fact that abuses in government are at length compelled to yield to the energy and perseverance of conscientious and self-sacrificing reformers, of which John Howard will ever stand as the highest type.

Jeremy Bentham, the contemporary of John Howard, aimed more directly to the modification of the penal laws, and especially the abolition of capital punishment. We will mention one or two of the objections which he urges against the death punishment. He says :

“The punishment of death is not *remissible*, no infallible system of jurisprudence having yet been devised, no test for the evidence of witnesses having yet been laid down, to render testimony equally conclusive for proving a fact, an action, or an intention, as a mathematical proof for a given proposition. In every other case of judicial error, compensation can be made to the injured person. Death admits of no compensation.”

Again he remarks :

“There is an evil resulting from the employment of death as a punishment, which may be properly

* Born in England, 1726, died in Turkey, 1790.

noticed here. It *destroys* one source of testimonial proof. The archives of crime are, in a measure, lodged in the bosoms of criminals. At their death, all the recollections which they possess relative to their own crimes, and those of others, perish. Their death is an act of impunity for all those who might have been detected by their testimony, whilst innocence must continue oppressed; and the right can never be established, because a necessary witness is subtracted."

"Whilst a criminal process is going forward, the accomplices of the accused flee and hide themselves. It is an interval of anxiety and tribulation. The sword of justice appears suspended over their heads. When his career is terminated, it is for them an act of jubilee and pardon. They have a new bond of security, and they can walk erect. The fidelity of the deceased is exalted among his companions as a virtue, and received among them, for the instruction of their young disciples, with praises for his heroism."

Jeremy Bentham died some thirty-five years ago, but his labors against the "barbarous law" will not soon be forgotten by his countrymen. His manner of attacking the gibbet was bold and courageous, and required *then*, as it does *now*, a steady nerve to deal frequent and heavy blows against that *giant* wrong which has so long disgraced our Christian civilization.

Sir Samuel Romilly (who died in 1818) was conspicuous in the efforts he made to modify the penal code of England. He was indefatigable in his labors to procure the abolition of capital punishment

for what would now be termed petty larceny — the picking of pockets for *five shillings* being at that time a capital offense.

A society for the abolition of capital punishment was formed in 1828, under the patronage of the Duke of Sussex, by J. Sydney Taylor, Sir Fowell Buxton, the Right Honorable Dr. Lushington, and others. As late as this period, the crime of forgery was punished by death; for we find that in 1830, a petition, signed by upwards of *a thousand* bankers, of Edinburgh, Dublin, Manchester, Liverpool, etc., comprising in all two hundred and thirty-three towns, was presented to the House of Commons by Henry Brougham. The petition contained the following remarkable statement: “That your petitioners find by experience, that the infliction of death, or even the possibility of the infliction of death, prevents the prosecution, conviction and punishment of the criminal, and thus endangers the property which it is intended to protect.”

This petition, so largely signed by the very class of men whose interests the death penalty was supposed to protect, led to the abolition of death punishment for forgery.

The criminal codes of few nations surpassed that of England in cruelty; for Hume informs us that during the reign of Henry VIII., *seventy-two thousand* great and petty thieves were executed; and during the reign of Elizabeth, *nineteen thousand* were

“devoured and eaten up by the gallows,” in one place or another.

No country in Europe, however, has made more substantial progress in penal reform than Great Britain; for instead of maintaining a code which formerly punished with death one hundred and fifty offenses, but *two* are now menaced with that penalty, viz., treason and murder, and for the former offense the death penalty may be said to be practically abolished.

A highly interesting letter on the practical workings of the death penalty in Great Britain, is herewith given, having been prepared for this work by the distinguished secretary of the London Howard Association, whose observations and experience in matters pertaining to penal reform, will ensure for the letter an earnest and careful perusal.

(For M. H. Bovee's work on Capital Punishment.)

ON THE RECENT ASPECTS OF THE CAPITAL PUNISHMENT QUESTION IN GREAT BRITAIN. By William Tallack, Secretary of the Howard Association, London; late Secretary to the English Society for the Abolition of Capital Punishment.

Since the Report of the Royal Commission on Capital Punishment, issued in 1866, and the consequent widespread discussion of the question, there has been manifested a marked tendency, in English public opinion, towards the total abolition of the death penalty. Further, the infliction of that penalty has become increasingly difficult and irregular, owing, in some degree, to

the growing and irrepressible tendency, on the part of philanthropic individuals and associations, to interpose obstacles in the way of carrying out a punishment which is fraught with so much evil, and unattended either by efficient deterrence, or by the promotion of security for murder. The Home Secretary stated in Parliament, in 1867, that upwards of *one thousand* applications for commutations (chiefly of the capital penalty) are annually received at the Home Office. But the intrinsic and permanent difficulties connected with the administration of this penalty, are themselves a far greater source of irregularity and confusion than any effort to obtain commutations.

As very recent instances, in England, of this peculiar irregularity of capital punishment, the following may be mentioned :

Charlotte Winsor, the worst murderer of modern times, who, as a cold-blooded matter of profit, killed helpless infants at the rate of £5 (\$25) each, was, in 1866, spared from the gallows and committed to penal servitude for life. On the other hand, women, far less ferocious, have been hanged ; as, for instance, Mary Ashford, at Exeter, in 1866, and Ann Lawrence, at Maidstone, in 1867. One Alice Holt was lately committed for a murder at Chester, perpetrated at the instance of her paramour, but being found pregnant, she was imprisoned for half a year, and then hanged after all the sufferings of suspense and of childbirth. Another murderer, Constance Kent, was imprisoned in consideration of her youth (seventeen years), but another young person, named Bradley, aged eighteen, was hanged at Jersey soon afterwards. Victor Hugo and many others inter-

ceded for him, but in vain. A local account of the prisoner stated: "It appears that the said Francis Bradley has, from his childhood, been brought up in the midst of misery and crime, and has never received the slightest moral or religious education, but has always been without a home or a friend." Several of the most brutal murderers, convicted in 1866 and 1867, have received commutations, whilst others, far less guilty, have been hanged in spite of the most earnest and numerous remonstrances.

The execution of women is peculiarly revolting, and we may add specially unbecoming in a Christian state under the sovereignty of the good Queen Victoria. Yet, recently several of these most horrible scenes have been exhibited by the English administration. The *Daily Telegraph* (a London newspaper) thus alludes to such a spectacle: "Now and again the law has been allowed to take its course, and a wretched woman has been dragged from the jail to the scaffold struggling with the warders, biting and clawing them, shrieking, and kicking, and plunging, till the hangman's assistants have forced her into the chair beneath the beam, and sent her out of the world with the clothes half torn off her back." These disgusting accompaniments characterized the executions of the women Ashford at Exeter, Holt at Chester, and Sarah Thomas at Bristol.

Other horrible scenes, which so often are witnessed at executions, present a further objection to the infliction of death. There is the riot, the obscenity, the ribaldry, and robbery, which are so universally noticed as accompaniments. In March, 1865, at the execution of Atkinson, a collier, at Dunham, the rope broke, and the crim.

inal fell alive to the ground. After half an hour's delay, the poor bruised wretch was hanged the second time. Again at Stafford, at the execution of Collier, in August, 1866, the rope broke and the man fell to the ground and had to be re-hanged. Other similar scenes have recently occurred. It may be added, that such horrors are just as likely to occur when executions are conducted in private, as when there are openness and publicity.

Every year it is afresh manifested that capital penalty tends more than any other, to excite a morbid and mischievous sympathy for the worst of criminals rather than for their victims. Prisoners condemned to penal servitude are not glorified in the daily press. Their images are not exhibited for money in large cities. Their meals, and minute details of daily life, are not watched and published as if they were martyrs and heroes. But all this, and a great deal more, happens to prisoners awaiting execution.

The three-fold execution at Manchester, in the autumn of 1867, was urgently protested against by the opponents of capital punishment as being likely to elicit sympathy with the Fenian sufferers. But the government, and the friends of the gallows, stoutly advocated the infliction of the capital penalty, adding, "if we hang these men, we shall stamp out Fenianism, deter its adherents, and vindicate the majesty of British law and the security of life in England." Well, what followed? Immediately after those three executions, Fenianism became *ten times* more rampant than ever before. The cry of martyrdom was raised by the general press of the Continent and of America, whilst at home, processions of tens of thousands of sympathizers in our large cities, indicated the real

effect of the capital inflictions. Not only so, but within three weeks of the Manchester executions, other Fenians committed the fatal outrage at Clerkenwell, which resulted in killing and wounding scores of persons, and in destroying a whole street of houses. Further, a general panic ensued all over the United Kingdom. So much for the absurd plea of the deterrent efficacy of capital punishment.

Again and again, it has happened that executions in various places have been immediately followed by several murders, often minutely resembling in detail the circumstances of those for which the fatal penalty had been locally inflicted. Absolute crops of murders have repeatedly resulted from specially notorious executions. Thus the hanging of Dr. Pritchard, at Glasgow, in 1865, and of Muller, in London, were each followed by about a dozen murders and attempts at murder. In several cases, the murderers alluded to the executions whilst committing the fatal act, exclaiming to their victims, "I don't mind being hanged for killing you, as Muller was." Such instances often occur.

Notwithstanding all the care of modern jurisprudence, there remains a danger of sometimes sacrificing innocent life through the capital penalty. There is solid reason to fear that the man Wiggins, executed in London, in the autumn of 1867, was innocent. He had been examined first before a coroner's jury, who, after hearing twenty-six witnesses, *pro* and *con*, returned an open verdict. He was re-arrested, tried before another jury, who found him guilty, but recommended him to mercy. Contrary to urgent remonstrances, the Home Secretary, Mr. Gathorne Hardy, hanged the man, who, with his dying

breath, exclaimed, "I am innocent, innocent, innocent." and it is probable he was really innocent. Within about two years, three men (Pollizzone, in London, Giardiniere, at Swansea, and Maguire, at Manchester, the latter in 1867), have been found guilty in English courts, after the most rigidly careful trials, ordered to death, and yet, through the eventual discovery of their innocence, have subsequently received absolutely free pardons. May we not hence infer that others have died innocent, and that a penalty, which alone involves such a terrible risk, should be abandoned for one attended with less risk, with more certainty of infliction and far greater deterrent efficacy.

Another evil, peculiar to the capital penalty, is the execution of insane persons for acts for which they are not morally responsible, or, at least, for acts committed under such unfortunate circumstances that it is peculiarly unchristian and inhuman to inflict death as their punishment. Scarcely a year elapses without the execution of some persons declared by competent medical authority to be insane. *The Spectator* newspaper remarked of a recent execution of this nature: "We might as well hang a man for committing a murder in his sleep, or for falling off a house-top on to a person below." The Capital Punishment Commissioners invited the attention of the legislature to this part of the question, but, as yet, the evil has not been removed. A large proportion of murderers attempt to commit suicide, thus indicating a strong presumptive reason to conclude the prevalence of insanity amongst this class of criminals in particular. This prevalence is still more clearly indicated, by the following statistics from the (official) English judicial statistics for ten years past (1857-66),

which show not only the continual danger of hanging insane persons, but also the peculiar and inevitable uncertainty (and hence inefficiency) of capital punishment:

Coroners' verdicts of willful murder.....	2,285
Persons tried for willful murder.....	664
Found guilty.....	231
Acquitted as insane.....	108
Hanged for willful murder....	135

It is admitted that the removal of the extreme penalty from all the one hundred crimes (except murder and treason), formerly capital in this country, has been attended with favorable results. For, greater public security of every kind is now enjoyed than in the old hanging days of George III. and George IV.

Further, the experience of many foreign states has shown that the abolition of the capital penalty has increased the certainty of punishment, whilst greatly decreasing the crimes. The motto of Beccaria is of permanent truth: "It is the certainty, rather than the severity, of punishment which constitutes its efficiency." The wisdom of this conclusion has been abundantly proved by the experience of the states where capital punishment has been totally abolished, as in Wisconsin, Rhode Island, Portugal, Tuscany, and several of the Swiss Cantons, and German Principalities; and also where the death penalty has been nearly or virtually abolished as in Russia, Austria, Bavaria, Würtemberg, Baden, Belgium, Maine, Pennsylvania, etc. In these countries, the substitutes of life-long confinement, or of other severe secondary penalties, have been found practi-

cable and efficacious. Even the suppression of treason is found to be far more effectual by other means than the gallows and the ax. It is exceedingly to be regretted, that recently the English government has lessened its dignity by the Manchester execution of Fenians. The United States has far more ground for vengeance on the cold-blooded murderers of fifteen thousand of its bravest soldiers in the horrible starvation-enclosure at Andersonville; but the dignified triumphs of that government have been maintained free from the pollution of the hangman's alliance. May all the states of America proceed further, and throw from them in disgust that horrid remnant of European feudal barbarism, — the gallows.

“Enough of blood the land has seen;
And not by cell or gallow's stair,
Shall ye the way of God prepare.”

Meanwhile, the most enlightened and thoughtful men in Great Britain, will continue to raise their voices for its abandonment here. It has been condemned by Earl Russell, Lord Romilly, Lord Houghton, Lord Sidney G. Osborne, John Bright, Frederick Robertson, of Brighton, Lord Hobart, Lord Chief Baron Kelly, William Evart, Charles Gilpin, Sir Walter Trevelyan, Bart., Professors Neate and Fawcett, and innumerable other influential men. Above all, it is opposed by the spirit of the Holy Scripture, and by Christianity. One or two isolated texts may perhaps be quoted to support it, apparently, just as Satan quoted texts to tempt our Lord, and just as thousands of sermons have been preached to justify slavery by the quotation of Paul's sending back Onesimus to his master. But, neverthe-

less, and finally, the gallows, like slavery, is condemned by the New Testament, is hostile to the spirit of Christ, and is at best a hateful and barbarous institution.

The above letter of Mr. Tallack, whilst pointing out the abuses and irregularities existing, and which must ever exist, under the law of capital punishment, affords a very encouraging view of the progress which has been made in the penal legislation of that country.

The “cause” of *anti-capital punishment*, in Great Britain, has been fortunate in having for its advocates some of the ablest statesmen that ever lived. The late Lord Brougham, whose singularly pure and unsullied character, combined with great intellectual power and large legislative experience, placed him in the very front ranks of the great statesmen of the world, was an earnest advocate of the abolition of the death penalty. Equally prominent in the vanguard of penal reform, stands the great Earl Russell.

In his introduction to the new edition of his work on the “English Constitution” (1865), Earl Russell thus expresses himself as being favorable to the abolition of capital punishment :

“ For my own part, I do not doubt for a moment either the right of a community to inflict the punishment of death, or the expediency of exercising that right in certain states of society. But when I turn from that abstract right and that abstract expe-

dency to our own state of society — when I consider how difficult it is for any judge to separate the case which requires inflexible justice from that which admits the force of mitigating circumstances — how invidious the task of the Secretary of State in dispensing the mercy of the crown — how critical the comments made by the public — how soon the object of general horror becomes the theme of sympathy and pity — how narrow and how limited the examples given by this condign and awful punishment — how brutal the scene at the execution — I come to the conclusion that nothing would be lost to justice, nothing lost in the preservation of innocent life, if the punishment of death were altogether abolished.

“ In that case, a sentence of a long term of separate confinement, followed by another term of hard labor and hard fare, would cease to be considered as an extension of mercy. If the sentence of the judge were to that effect, there would scarcely ever be a petition for remission of punishment, in cases of murder, sent to the Home Office. The guilty, unpitied, would have time and opportunity to turn repentant to the Throne of Mercy.”

The late Richard Cobden, who was known as the distinguished leader of the free trade party in England, was an earnest opponent of the law of “ blood for blood.” The following is an extract from a letter addressed by him to the secretary of a public meeting held in Exeter Hall, April, 1846 :

“ In my opinion there are but two rational objects to be sought in the punishment of criminals, viz. :

the reformation of the offender, and reparation to society for injury done. But I could never see how the strangling of men could possibly accomplish either of these ends. There is one plea still put forth in favor of death by hanging, which used formerly to be adduced in defense of burning, racking, gibbeting, and quartering — I mean the necessity of striking terror by example. If there be any force in this argument, we ought to go back to the greater wisdom of our ancestors, and light up the fires of Smithfield again, or decorate Temple Bar with the heads of malefactors. Without taking those higher grounds which the genius of Christianity, if not its direct precepts, afford for opposing capital punishments, I hold that the system is totally indefensible on the score of utility : and I hope I shall live to look back upon the barbarous and brutal exhibition of the gallows as a thing of the past times, only to be remembered as affording proof of our own advance in civilization and humanity.”

Lord Romilly, Lord Houghton, Lord Sydney G. Osborne, Lord Hobart, and other distinguished statesmen, may be mentioned in connection with the cause of anti-capital punishment in Great Britain ; whilst John Bright, Charles Gilpin, William Ewart, and Charles Neate, as members of Parliament, have rendered our cause signal service in the many debates which have taken place in the House of Commons ; and, by the clear and forcible manner in which they have presented their views, have placed themselves foremost amongst the champions of our cause in that country.

Charles Dickens, too, has rendered efficient service to the cause of penal reform, having, many years since, placed himself in opposition to the "barbarous law." In a series of letters to the *Daily News*, some twenty years ago, Mr. Dickens did much towards educating the English mind to the importance of a modification of the then existing penal code of that country. In one of his letters, headed, "How Jurymen Feel," he said :

"Juries, like society, are not stricken foolish or motionless. They have, for the most part, an objection to the punishment of death, and they will, for the most part, assert it by such verdicts. As jurymen in the forgery cases (where jurors found a 10*l.* note to be worth 39*s.*, so as not to come under capital punishment) would probably reconcile their verdict to their consciences by calling to mind that the intrinsic value of a bank note was almost nothing; so jurymen, in cases of murder, probably argue that grave doctors have said all men are more or less mad, and therefore they believe the prisoner mad. This is a great wrong to society; but it arises out of the punishment of death. And the question will always suggest itself in jurors' minds, however earnestly the learned judge presiding may discharge his duty—"Which is the greater wrong to society—to give this man the benefit of the possibility of his being mad, or to have another public execution, with all its depraving and hardening influences?" Imagining myself a juror, in a case of life or death, and supposing that the evidence had forced me from every other ground of opposition to this punishment in the particular case than a possibility of

immediate mistake or otherwise, I would go over it again on this ground, and if I could, by any reasonable, special pleading with myself, find him mad rather than hang him, I think I would."

Within the past few months, Great Britain, following the lead of many of the American States, has abolished public executions ; thus *tacitly* acknowledging that she no longer possesses the courage to publicly execute so infamous a law. Henceforth, then, in that country, these *murderous* exhibitions are to be *choice* and *select* ; the *killing* of the criminal to be *privately* conducted, with the seeming view of imitating, as nearly as possible, the *very crime* which the law essays to punish. One step farther in this direction : — when the executioner, binding his victim hand and foot, and with no witness but the All-seeing eye, shall consummate the death of the helpless prisoner, then, indeed, will the friends of the gibbet have achieved a triumphant success, in *murdering* the condemned criminal as he, perhaps, sought the life of his own victim, with no pitying eye to behold the brutal transaction, no friendly hand to avert the fatal blow.

If the gibbet possess a deterring power in repressing crime, that power should be made publicly manifest ; for when its terrors are removed from the eyes of men, the confession is forced from its supporters, that the gallows can no longer be made a useful lever in repressing crime, but has

degenerated into a mere weapon of assault ; and like the assassin's knife, is used to gratify the baser propensities of the human heart. And while this view of the question confronts our moral sense, let us feel grateful that the gibbet has, at last, been forced into so close a corner ; for with the rapid march of progress, its certain destruction is not far in the future.

While the bill, to privately inflict the punishment of death, was under discussion, Mr. Chas. Gilpin moved an amendment that capital punishment be abolished altogether, and, in an able speech, sustained the amendment. He was well supported by Mr. Neate, who concluded his remarks by saying that "if capital punishments were abolished, we should be compelled to devise some means of better educating and humanizing the people."

John Stuart Mill, a member of the Liberal party, while complimenting the philanthropists of the age upon the splendid achievements which they have secured in the field of reform, took occasion, nevertheless, in a lengthy speech, to advocate the continuance of this disgraceful punishment. Mr. Mill has spoken many noble words for human reforms ; but this speech has occasioned deep regret to his many friends in both England and America ; and that regret is deepened by the reflection, that so able a man should have sustained his position by arguments so weak and puerile,— his principal reason for sustaining this cruel law being based on grounds of humanity — that "hanging" is a more merciful

punishment than imprisonment. Mr. Mill has yet to learn, that mercy is an element which is not to be confined wholly to the criminal; that whilst, in many cases, the gallows might prove an angel of mercy to the unhappy prisoner, it would at the same time prove, as it ever does and ever will prove, the demon of torture to the virtuous and good. And it is just here where too many of the advocates of the *abolition* of capital punishment make a grave mistake,—in endeavoring to substitute for the penalty of death, a punishment which is, in reality, a more cruel one than “hanging,” viz.: *solitary confinement* for life, which, in too many cases, dethrones reason, and sends the criminal to the “madhouse.”

When the friends of our “cause” shall have abandoned so heartless a substitute, and are willing to temper, with the necessary restraint of the criminal, those kindly influences which our present Christian civilization affords, advocates, like Mr. Mill, will be powerless to retard the progress of penal reform, by the advocacy of *judicial murder* as a matter of mercy to the criminal.

Mr. Charles Phillips, of England, is the author of a pamphlet edition of a work entitled, “Vacation Thoughts on Capital Punishment,” in which he has furnished the most conclusive reasons for the unconditional abolition of the death penalty; but in presenting his substitute, has not lost sight of the *retributive element*, which is the essential feature of the death punishment. We embody his substitute:

“ Perpetual imprisonment, certain and incommutable.”

“ Hard labor for life, the produce being for the public benefit.”

“ The silent system one day in each month, and on the anniversary of the crime.”

“ A strict exclusion from the external world in every way, and the perusal of religious works, alone, permissible.”

“ The most frugal fare compatible with health.”

“ The prison to be appropriated exclusively to the convicts for murder throughout the United Kingdom; to be built on an elevation, visible, but secluded; to have a black flag waving from its summit, and on its front inscribed :

“ THE GRAVE OF THE MURDERERS.”

Mr. Phillips' substitute is founded upon the fallacious idea that homicidal criminals are very much worse than those found guilty of the minor crimes. Whilst we admit that murder is the gravest offense known to the law, and that no crime can be more atrocious in its very nature than this, still, we are prepared to establish the fact, fortified by the testimony of Prison Inspectors, and the experience of criminal lawyers, that those violators of law, known and specified as murderers, are, on the average, better men than those so frequently convicted for larcenies and the minor offenses,—proof of which assumption will be found in a subsequent chapter of this work.

In Great Britain, progress in penal legislation

seems to have been comparatively slow; but when we reflect upon the obstacles which lie between the voice of the people and the consummation of the reforms they so much desire,—when we observe that the popular will, through forms of petition, fails to stir legislation, as in our own country, we must confess that Great Britain is behind none other, in the progress already made in the field of Penal legislation.



CHAPTER XI.

PROGRESS OF PENAL LEGISLATION IN THE UNITED STATES.

“The difficulty of procuring capital convictions is increasing; and it is confidently anticipated that capital punishments must cease in this country, if for no other reason, because they can not be carried into effect.”—PROF. T. C. UPHAM.



MONG the early advocates of the modification of the penal codes of America, Edward Livingston* stands prominent.

In the year 1802, he emigrated from New York to Louisiana, and in 1821, was appointed a commissioner, by the Legislature of Louisiana, to revise the criminal code of that State. His revision was adopted by Louisiana and some of the South American States. One of the essential features of this code was the practical abolition of the penalty of death.

The earnest efforts of Mr. Livingston to soften the criminal laws, by the substitution of milder penalties, were not without influence upon penal legislation in this country. It would be very interesting indeed, to follow, in detail, the march of legislation in the United States, and to do justice, in this connection, to the noble souls who, with patient toil,

* A native of New York; born in the year 1764; died in 1836.

have labored for the abrogation of the barbarous law of capital punishment; but, within the limits of this volume, we can not find the necessary space. We can, therefore, do but little more, than to furnish the experience of those States whose penal laws have been marked by substantial modifications.

The State of Maine, many years since, *practically* abandoned the law of "blood for blood." Prof. T. C. Upham, of Bowdoin College, in this State, has done much towards enlightening public sentiment on this question. In a letter to the secretary of the Society for the Abolition of Capital Punishment, in London, in 1864, Prof. Upham bears evidence to the beneficial effects of the modified law in this State. We make the following extracts:

"The system of the State of Maine, which has existed about thirty years, is somewhat peculiar. It recognizes the right of capital punishment, but limits its infliction to the crime of murder. It requires, also, that it shall not be inflicted until the expiration of a year, which gives time to the criminal for reflection and repentance, and also for the appearance of new evidence, if he should happen to have been unjustly condemned. At the expiration of that time, when public sentiment against the criminal has become less excited, it is left optional with the Governor of the State to order him to execution, or to detain him in prison, according as his views of the good and safety of the State may require."

"This system, without giving up the principle of

capital punishment, is, practically, almost an abolition of it. During the *thirty years* of the existence of this system, *one person only* has been executed under it, who had added to his previous crime,* that of killing the warden of the State prison."

"To the question, *viz.*: whether imprisonment with hard labor, for life, or for a term of years, can be adopted as a safe substitute for the gallows, it is certainly right to say, that the experiences of this country look favorably in that direction."

"It is right, in my opinion, to remember that the criminal is still a man; and while we make the protection of society the first object, we are not to cease to do him good."

"In some cases, at least, only the Infinite Mind can understand the amount of his temptations and sufferings; and we all stand in need of forgiveness."

Prof. Upham, in reply to a letter of inquiry, sends us the following:

KENNEBUNKPORT, MAINE, Aug. 16, 1867.

HON. MARVIN H. BOVEE—*Dear Sir*:—Allow me to express my high appreciation of your earnest and successful labors in the cause of humanity—especially those which have relation to crimes and punishments. Undoubtedly society, and the laws which are at the foundation of society, are to be sustained. And if the death penalty is necessary to this result, then the death penalty is a legitimate mode of punishment. But, if the many experiments, which have been made during the past century, show that society can be sustained

* Larceny.

without it, then it is equally clear, that some other form of punishment should be substituted for it.

For more than thirty years the death penalty has been practically abolished in the State of Maine. The State has not abandoned the right to inflict that form of punishment, but has so framed its laws that this right is seldom exercised, there having been only *one* person executed under the State laws during that long period of time; and yet I think that there is good reason for saying that life and property are as secure in Maine, as in any other of the States. It would be useless for me to repeat to you, who are so well acquainted with the subject, the many other historical instances which look in the same direction.

In my view, there are many and decisive reasons against the taking of life as a punishment; and I sympathize with you entirely in your self-sacrificing and laborious efforts for the abolition of capital punishment; believing, as I do, that, although in some cases temporary evils will result from its abolition, on the whole, the ends of justice will be more certainly secured, and the great interests of humanity promoted thereby.

It would give me pleasure to enter more fully into the subject, and to give such arguments as seem to me satisfactory for the opinions I entertain, but my age and the state of my health forbid my doing so at present.

Your letter is addressed to me at Brunswick, but I have resigned my office of Professor there, after *forty-three* years of service, and now reside at Kennebunkport. With gratitude for your kindness, and with earnest desires for your prosperity and usefulness, I remain, most respectfully, yours,

THOMAS C. UPHAM.

Ex-Gov. Washburn, of this State, replies to our inquiry in the following *brief* but decisive manner:

ORONO, ME., Oct. 13, 1866.

M. H. BOVEE, Esq.—*Dear Sir*:—To your question, “do you consider the death penalty necessary to the security and well being of society?” I answer, No!

And am, very truly, yours,

I. WASHBURN, JR.

The capital punishment law of Vermont is “hedged in” by the same restrictions which encompass the Maine law; no execution having taken place in many years; and there is no disposition on the part of the people to return to the “old law.”

Massachusetts still retains the death punishment for the crime of murder, “although other States, as intelligent and refined, as secure and peaceful, have substituted for it the more benign principle that good shall be returned for evil.”

The power of pardon, and the commutation of sentences is vested in the Governor and Council.*

Ex-President John Quincy Adams, Hon. Horace Mann, Hon. Robert Rantoul, Rev. Chas. Spear, and Ex-Gov. John Andrew, during their lives, were earnest advocates of the abolition of capital punishment in this State. The report of Mr. Rantoul, to the Legislature of Massachusetts, in 1836, is a document

* Lt. Gov. and nine members of the Senate.

evincing the great research and distinguished ability of its author.

Rhode Island abolished the gallows in 1852, and has never revived that barbarous institution. In reply to a letter soliciting information upon the practical workings of the law, the Secretary of State sent us the following reply :

PROVIDENCE, R. I., Oct. 19, 1859.

M. H. BOVEE, Esq.,— *Dear Sir:*— I have your favor of the 30th ult., requesting me to furnish certain facts relative to the law abolishing the punishment of death in Rhode Island. I would most willingly comply with your request, but am in possession of no facts, and have no documents or reports in my office, from which the statistics you wish can be obtained. I was not connected with the government of this State when the law passed, and the annual reports of State prison inspectors do not give the facts desired. Similar inquiries have been put to me, from various quarters, which led me to make inquiries of *many persons here*, the result of which is, that *crime has not increased since the death punishment was abolished*.

I remain, dear sir,

Yours, very respectfully,

JOHN R. BARTLETT,

Secretary of State.

Later information, relative to the beneficial effects of abolishing capital punishment in Rhode Island, is found in the letters of the Executive of the State

which were written to John Bright, in 1864. Under date of March 21st, of that year, the Governor says :

1. The death penalty was abolished in this State in the year 1852. 2. I do not think its abolition has had any effect upon the security of life. 3. Is the law against the death penalty sustained by the public sentiment of the State ? Very decidedly. 4. Are convictions and punishments more certain than before the change was made ? I think they are. 5. What is the punishment now inflicted on such criminals as were formerly punished with death ? Imprisonment for life at hard labor. I have conversed with one supreme judge, State attorney, and warden of the State Prison, and they support my own established view upon the subject."

In a second letter, dated April 4, the Governor remarks :

" Our present able Chief Justice says : 'Although opposed to the present law when passed, I am equally opposed to a change in it until the experiment has been tried long enough to satisfy us that it has failed. I am clearly of opinion that the present law is sustained by public opinion ; and I believe it will continue to be, until it is satisfactorily shown that crimes against life have been considerably increased in consequence of it. My observation fully justifies me in saying, that conviction for murder is far more certain now, in proper cases, than when death was the punishment for it.' "

The Hon. H. Rogers, Jr., Attorney General of Rhode Island, concludes a letter to us, under date of Jan. 26th, 1867, as follows : "I think our people *do not desire* to return to capital punishment, though a *minority* would, of course, favor a return."

A still more explicit statement of the operations of the anti-capital punishment law of Rhode Island, will be found in the subjoined letter, kindly furnished us by the warden of the State Prison :

RHODE ISLAND STATE PRISON, *July 2, 1868.*

MARVIN H. BOVEE, Esq.—*Dear Sir:*—Yours of June 27th, asking for certain information relative to those inmates of our prison who have been convicted for the crime of murder, and sentenced to life imprisonment, has been received. Capital punishment, as you are aware, was abolished in this State in 1852. The following table will show the number of convictions for murder which have taken place since 1852, which, under the old law would have been punished with death :

In 1852, 2 convictions.	In 1861, 2 convictions.
In 1853, 0 "	In 1862, 1 conviction.
In 1854, 1 conviction.	In 1863, 1 "
In 1855, 1 "	In 1864, 2 convictions.
In 1856, 1 "	In 1865, 0 "
In 1857, 1 "	In 1866, 0 "
In 1858, 1 "	In 1867, 3 "
In 1859, 0 "	In 1868, 0 "
In 1860, 0 "	Total number, 16.

Of the total number thus convicted, *four* have died, and *two* have been pardoned, leaving *ten* "life mem-

bers;" of this number, one (a female) is insane, though her malady is not of a very marked or dangerous character.

Those confined for murder all seem possessed of violent tempers; and when excited, lose all reason; but if met with kind words, I find them tractable, and easily affected to tears. In nearly every instance, they are ignorant of a common school education. Nearly all are deeply interested in Sabbath school exercises and church service, and feel great relief in expressing their convictions at conference meetings in the chapel.

I do not think the crime of murder has been more frequent since the abolition of the death penalty. *On the contrary*, considering the increase of population since 1852, *it has diminished*.

The present law is well sustained by public sentiment. A strong feeling pervades the public mind, that unless some mitigating circumstances should arise, this class of prisoners should remain for life. Thus will imprisonment answer the ends of justice, and afford protection to the community; at the same time, these unfortunates are instructed and encouraged to prepare for that *better* existence, of which the gallows would have deprived them.

I shall be happy to see your work on Capital Punishment, as it must contain profitable instruction to those who have prisons in charge. I am, dear sir,

Yours, respectfully,

NELSON VIALL, *Warden.*

Here, then, we have the concurrent testimony of State officers, supreme judges, and prison wardens,

to the effect that those crimes which were formerly punished with death, *have not increased* in consequence of the abolition of that dreadful penalty. It will be observed, also, that this testimony is not confined to the friends of "abolition," but comes equally conclusive from those who were formerly opposed to the repeal of the capital punishment law.

For *sixteen* years has Rhode Island, by her own *experience*, established the important fact, that society is just as peaceful and secure *without* the gibbet as it would have been *with* it.

Of the New England States, Rhode Island, only, has unconditionally abolished the penalty of death. Maine and Vermont have *practically* reached the same conclusion, while Massachusetts, New Hampshire, and Connecticut, still cling to the "brutal law, although public sentiment in those States is strongly against its further retention. But a short time will elapse before the penalty of death shall have disappeared from the statute books of every one of the New England States.

No State of the American Union has been the field of more determined struggles between the friends and foes of capital punishment, than the State of New York. As early as 1794, Gov. George Clinton recommended important modifications of the criminal code of that State. In his message to the Legislature, in that year, he says :

“The sanguinary complexion of our criminal code has long been a subject of complaint. It is certainly a matter of serious concern that capital convictions are so frequent — so little attention paid to a due proportion of punishment.”

In 1798, Gov. Clinton again called the attention of the Legislature to the evils of the death punishment. He says :

“When a law is treated with manifest disrespect, it should be either repealed, or better means made use of to enforce it.”

In 1802, Gov. Clinton again referred to this question in the following language :

“The wisdom of substituting imprisonment instead of death has been in a great measure realized.”

Gov. Daniel D. Tompkins, who occupied the Executive chair of this State for four successive terms, repeatedly recommended the abolition of capital punishment. In his message of 1812, he urges its abrogation, saying :

“I have always entertained serious doubts whether society has the right to take away life in any case. It is the vestige of barbarism.”

Gov. DeWitt Clinton, in 1820 and 1824, urged upon the Legislature of New York the necessity of modifying the harsher features of the penal code.

Gov. Seward, during his occupancy of the Executive chair of the Empire State, from 1839 to 1842, inclusive, made the following suggestions to the Legislature. In 1839, he said :

“ All institutions of government are imperfect — subject to the law of improvement. Despotism says : ‘ No, because they are old.’ A different principle prevails in America. As the intelligence of the people increases, the power of the government may be abridged.”

1840. “ The high reputation of our prisons has become impaired by the complaints of inhumanity. In their management, moral influence, instead of severe corporal punishment, should be employed.”

1841. “ Discipline should be tempered with kindness.”

1842. “ Every philanthropist clings to the hope that the supremacy of the laws will be maintained without exacting the sacrifice of life.”

In 1841, Hon. John L. O’Sullivan, a member of Assembly from the city of New York, reported a bill for the abolition of the death penalty, accompanied by one of the ablest reports ever presented on that question. The efforts of Mr. O’Sullivan to carry the measure proved unsuccessful, although but *five* votes more were needed to secure its passage.

In 1846, Hon. James H. Titus, a representative from New York, made an able report in favor of repealing the “ odious law ;” and on several subse-

quent occasions, Mr. Titus has particularly distinguished himself by his public services in behalf of this reform.

In 1847, Hon. John Stanton Gould, of Hudson, presented an admirable report, both scientific and philosophical, to the Assembly of this State, accompanied by a bill for the abolition of the "irremediable law." The Assembly refused to pass the bill.

In 1851, another effort to secure the repeal of the "bloody law," was made by the friends of penal reform. Hon. Geo. E. Baker, member of Assembly from Albany, gave the subject his special attention, and pressed the question with so much vigor, that the bill was defeated by only *one* majority. The report which accompanied the bill was one of surpassing ability. At this point, we append the letter of Mr. Baker in response to a letter of inquiry from us :

WASHINGTON, D. C., Oct. 28, 1867.

HON. MARVIN H. BOVEE,—*Dear Sir:*—My views in regard to capital punishment are fully set forth in the report which I had the honor to make to the Legislature of New York in 1851. I can speak more fully in commendation of the argument of that report, from the fact that it was substantially the work of another— one of the most able minds in the realms of criminal jurisprudence. My later experience has served to confirm me in the opinion expressed by Theodore Parker, that "the gallows is one of the strongest outposts of the devil," and of that celebrated writer and philosopher, M. B.

Sampson, "that however suited the death penalty may be for other crimes, for homicide it is the most unwise and ineffectual."

Nothing is more certain than that, with the advance of Christian civilization, the gallows must disappear.

Your efforts to hasten the time, are worthy to be compared with the labors of Howard in the Old World, and of Friend Hopper in our own country.

Truly yours,

GEO. E. BAKER.

A report favorable to "abolition," was made to the Assembly in 1857, and again in 1859; but on neither occasion had the friends of our cause sufficient strength to carry the bill.

Early in January, 1860, the author of this volume, filled with the desire of ridding his native State (New York) of so foul a blot upon her statute book as the penalty of death, issued an earnest appeal, which was published in the *New York Tribune*, urging the friends of penal reform to vigorous and united action in behalf of the "repeal," and pledging them his hearty coöperation in an effort to secure the abolition of the gallows. "A systematic agitation of the question followed." Three months of incessant labor were given to the "cause," during which time we canvassed a large portion of the State; petitions for abolition being constantly forwarded to the Legislature.

Hon. Burt Van Horn, of Niagara, was chairman

of the Select Committee, to which were referred all petitions relating to the question. During the latter part of March, this committee reported a bill, accompanied by a *unanimous* report, in favor of abolishing the penalty of death. This bill was shortly after pressed to a vote, when it was ascertained that, for the first time in the history of the State of New York, the friends of this measure had achieved a signal triumph in the passage of a bill *unconditionally* abolishing the gallows; and this, too, by *fifteen* majority, in the face of the fiercest opposition. The enemies of the measure fearing, and with good reason, that the Senate would sustain the action of the Assembly in the premises, offered to capitulate on condition the Assembly bill should undergo certain modifications. A conference of the friends of the bill was had, and, upon reflection, it was deemed the wiser plan to modify the bill in such manner as would ensure its passage by the Senate, while its main features would secure the *practical* abolition of the gallows.

On the following day, Mr. Van Horn, who had so brilliantly led the charge which had routed the enemy, himself moved a reconsideration of the vote by which the bill had passed, and offered a substitute, which was adopted by the Assembly; and in this form, the bill became a law. This act was substantially the same as the Maine law, to which reference has been made in the first part of this chapter; and for *two years*, during which time the law was in

operation, no criminal was executed under it. But the *capital punishment* judges, who generally felt themselves exalted by the exercise of the privilege of sentencing men to death, determined that the law should not stand; and on account of some defect, which they alleged existed in the law, they refused to try the prisoners under it; and this action on their part, in connection with the demoralizing effects of the war, then fairly inaugurated, led to the re-enactment of the death penalty.

Very many of New York's distinguished sons, desire either the modification or absolute repeal of the capital punishment law. Among this number may be found Hon. Horatio Seymour, who some time since furnished his views on this subject, permission to publish which, in this volume, has been recently given. We herewith insert Gov. Seymour's letter.

UTICA, N. Y., April 4, 1859.

MY DEAR SIR:—I do not know exactly how far we shall agree with regard to capital punishment. I am decidedly in favor of softening our criminal code, for many reasons. By so doing, we shall secure greater certainty of convictions in cases of guilt. I am a strong believer in the influence of hope rather than that of fear. The longer I live and the more I see and learn of men, the more I am disposed to think well of their hearts and poorly of their heads.

The proper treatment of pauperism and crime has always been the most perplexing problem which legislators have had to deal with. The right solution of the question is certainly a matter of great concern to the public.

The question of abolishing capital punishment has been very much discussed in this State, and you will find the minds of most men made up with regard to it. In 1844, Mr. O'Sullivan made a very elaborate report upon the subject. His project was defeated.

It will give me great pleasure to see you when you are in New York.

Very truly, yours,

HORATIO SEYMOUR.

MARVIN H. BOVEE, Esq.

We here give place to the letter of Hon. Gerritt Smith, which contains his views on this question, and which were sent us expressly for this volume.

PETERBORO, N. Y., Nov. 21, 1868.

HON. M. H. BOVEE,—*My Dear Sir:*—I have never taken the ground that human life is “inviolable.” Nevertheless, I have, for many years, held that there should be no capital punishment in a nation or state where the imprisonment of the convict can be made sure.

I believe that capital punishment exerts a depraving influence on the public mind; and that, whilst it deters

the commission of no crime, its tendency is to make all crimes more frequent. Still, should it turn out that the safety of the innocent requires the taking of the life of the guilty, then let it be taken; for the safety of the innocent is the first consideration. But I do not believe that it will require it where the guilty can be shut up beyond the power of escape.

I trust that you will be in Albany the coming winter, to argue with our Legislature for the abolition of capital punishment.

With great regard,

Your friend,

GERRITT SMITH.

The subjoined letter of the late ex-President Van Buren, to which we give place, will probably be regarded as a *literary* curiosity by those of our readers who, like ourself, admire *explicitness*, rather than *studied ambiguity*.

LINDENWALD, Sept. 13, 1860.

MY DEAR SIR:—I have received your kind letter, and thank you very sincerely for the obliging expressions and friendly sentiments it contains.

The interest you take in the *great question* to which you have called my attention, does you much credit; and the character of your letter leaves me no room to doubt

that your efforts for the development of truth in *respect to it*, will be useful to humanity and creditable to yourself. In *so commendable an undertaking*, you have my best wishes for your success. But, my dear sir, you forget my advanced age when you invite me to write an essay *in respect to it*; as an opinion, without the reasons upon which it is founded, would not be very useful, or satisfactory. I am glad to see that *the subject* is exciting attention, as I infer that to be the case from the applications which have been made to me in *the matter*. Young men of talent and genius like yourself, can not be more usefully employed.

I remember your father with much respect and kindness, and beg to be cordially remembered to him,

And am, respectfully,

And truly yours,

M. VAN BUREN.

MR. M. H. BOVEE.

A careful perusal of the above letter will furnish *no information* as to the subject upon which we had invited Mr. Van Buren's opinion. Although he makes *six* distinct allusions to some subject to which we had called his attention, the reader can not well determine whether we had written him on the question of land reform, temperance, anti-slavery, or social reform. But when we furnish the *key* to the letter by stating that the opinion we desired of Mr.

Van Buren was in relation to capital punishment, it places that distinguished statesman, now deceased, on *our side* of the question; for he says: “*in so commendable an undertaking, you have my best wishes for your success.*” And again, “young men of talent and genius like yourself (very complimentary), *can not be more usefully employed.*”

Subsequently, in a conversation with Mr. Van Buren, he stated to us, in reply to an intimation as to his reticence, that he did not deem it prudent to always declare his opinions upon the various questions which were, from time to time, presented to the public mind; that he was, however, decidedly opposed to capital punishment; and that he had freely declared his views, many years before, to Thomas Jefferson,* at his house in Virginia.

In taking leave of New York, we will only add, that public sentiment is ripe for “repeal,” and that the Empire State will soon speak boldly for the right.

In Pennsylvania, the cause of penal reform has made substantial progress. Although the penalty of death is still retained for a single offense, the irregularity which attends the administration of the law, and the utter repugnance of the public mind to its general enforcement, betoken the early abrogation of capital punishment. The benign prin-

* Mr. Jefferson died in 1826. Mr. Van Buren was first elected to the United States Senate in 1821. It was during his senatorial term that Mr. Van Buren frequently visited Mr. Jefferson.

ples of the Quaker statesman, William Penn, have found secure lodgment in the hearts of the people of this noble State, and when the law of "blood for blood" is once effaced from the statute book of Pennsylvania, the character of her citizens affords assurance that no retrogressive step will be taken.

The late Vice President Dallas, who was a resident of this State, was an earnest opponent of the penalty of death. He thus spoke of it:

"Time and reflection have confirmed the opinion cherished by me for many years, that in our country at least, no just cause exists for the infliction of death punishment; and that its abolition will be hereafter looked upon as evidence of the moral character of nations, as they shall successively blot it from their criminal code."

The late ex-President Buchanan, in reply to our letter of inquiry, touching this question, sent the following answer :

WHEATLAND (near Lancaster), P.A.,
Feb. 4, 1867.

MY DEAR SIR:—I have delayed too long to answer yours of the 14th ultimo, simply because I was reluctant to refuse the request of a friend whom I should gladly oblige.

I think there is one crime,—that of willful and deliberate murder,—which ought to be punished with death; not from vengeance towards the criminal, but for the

protection and defense of society. In this *I may be wrong*; but such has *always* been my conviction.

From your friend,

Very respectfully,

JAMES BUCHANAN.

MARVIN H. BOVEE, Esq.

Mr. Buchanan hesitated to *publicly* declare his convictions on this question; but the friendly personal relations which had for many years existed between this distinguished statesman and the author, seemed to outweigh his reluctance. It will be observed that Mr. Buchanan thought he *might* be wrong in his opinion, and adds that such had *always* been his conviction,—a conviction based probably upon an early education, when but little progress had been made in penal reform, and when “hanging was regarded as one of the symbols of Christianity.”

We give place to the following letter from a distinguished citizen of Philadelphia. It breathes the very spirit of *love*.

PHILADELPHIA, 4th mo. 24, 1868.

HON. MARVIN H. BOVEE, Eagle, Wis.—*Respected and Earnest Friend* :—It is impossible to estimate the encouragement given to those who labor for a higher and more spiritual life, to find that far beyond their own humble influence, there are active and faithful workers in the same fields of reform. It therefore can not be

otherwise than deeply gratifying to receive from you the assurances of your interest and eminent success in abolishing the "Death Penalty," inasmuch as I have been, and am at present, uniting my energies with devoted friends to your noble cause. For myself I will say, that I regard the taking of the life of a criminal, as a consummate mockery of religious professions. The very one who ought to live the longest lease of time the Lord will permit, that there may be reformation and restitution, the law of capital punishment deprives of life. True, in this State the law is confined to "murder in the first degree," and, as though the executors of the law were ashamed of it, I will call your attention to the fact, that the executioner is not a clergyman, and the execution is not held in the church. Is it not strange that if, as the ministers so frequently hold, this business of the taking of life is an holy one, "an ordinance from God," that the fearful work should be performed in the prison yard, and by a hired hangman? Should it not rather be conducted in the most sanctified places, and by those who are regarded as the Reverends of our land?" Instead of this, the criminal is nursed if sick, fed if hungry, prayed for and pitied, and even supported to the gallows, and the rope carefully adjusted; kind words said, the kiss passed, the hand pressed, and then — *brutally murdered!* May we not exclaim, "Behold how these Christians love one another. We feel convinced that this remedy, so called, is not salutary, but conducive of crime. In our county alone, eight persons have been tried for homicide within 60 days. We had numerous murder trials last year, and there are now seventeen persons who have been indicted for murder, await-

ing trial. Since the last execution, an increased number of homicides have been committed, and it must, in the nature of this antagonistic law to all the principles of love, justice, mercy, and humanity, continue to be so until the people are convinced that the reign of terror must succumb to that of love.

The penal system should be reformatory and protective. In an enlightened age it should comprehend the reformation of the criminal, the prevention of crime, and the protection of society. How can capital punishment subserve these first and great principles? It can not subserve the first, because it destroys the very life of the one we ask to have reformed. Nor the second, because it sets an example of the taking of human life—the greatest crime in the calendar. Nor the third, because it takes away the very means for making any restitution for the wrong done, either to the friends of the murdered, or society at large.

I apprehend that when we look at this matter with the eyes of common sense, common justice, and a common humanity, we will read our own folly and wickedness in permitting the present laws to remain in force.

We must cease arrogating to ourselves so much of wisdom and power as to deprive any one of life. We must see that the law of force has not succeeded, and that we must try that of love and kindness. We must introduce a system of self-pardoning to the prisoner. Make premiums for good behavior and reformation. The better the prisoner, the shorter the term. It will be a constant encouragement, and prove, even to those who have gone farthest astray, that *it pays to be good.*

After visiting public prisons for some twelve years, I

am confirmed in the proposition that we shall do infinitely better to turn our prisons into schools; to treat the criminal as a pupil, and not as a felon; to regard crime as a disease, and not as a choice; and never to forget that the spark of divinity is to be found in every one, no matter how guilty he may have been, and that kind attention, sympathy, and love, will bring forth the fire of humanity from this little spark.

In this spirit my visits are made to the prisons. In this spirit, at the conventions of the Universal Peace Society, we pass resolutions against the death penalty; and at one of the recent meetings of the Pennsylvania Branch Society, a memorial was prepared, and sent to the Legislature of this State by the Hon. John Hickman, of Chester Co.

This will prove to you, my earnest friend, that we gratefully acknowledge your letters and services, and we shall continue to coöperate with you in the tearing down of the gibbets of the nineteenth century. And if it be possible for you to visit our State and make your appeal, we shall give you a hearty welcome, and think we can promise you at least an attentive hearing, and I may say, a fair encouragement for ultimate success.

With assurances of respect for your services, and a hearty coöperation with you, I am, cordially,

Your Friend,

ALFRED H. LOVE,

President of the Universal Peace Society.

New Jersey still clings to the gallows, although our friends are making decided progress, and with promise of certain triumph within a short time.

Delaware not only maintains the gallows, but the “whipping post.” When her people are educated up to the point of abolishing the latter, the former institution will soon disappear.

The penal code of Maryland is comparatively mild, and death punishments are rarely inflicted.

Upon the whole, we are very well satisfied with the aspect of affairs in the New England and Middle States ; still, “ ‘tis passing strange” that the high civilization which prevails in many of the States referred to, has not succeeded in placing the seal of condemnation upon so unholy a law as the penalty of death.

In the language of a distinguished poet, let us ask :

How is it, when you doom to death
Some victim, for his crime,—
Accounting him not fit to live,
You still allow him time
To make his peace with *God*, for what
Yourselves will not forgive?—
Presuming, that though fit to die,
He is *not fit to live!*

Now, though he be not fit to live,
Is he prepared to *die*?
Sent, strangled, from this world of woe,
Before his *God* on high?
You send unto his darkened soul
The consecrated priest;—
And, when reduced to penitence,
You hang him like a beast.

Beneath the culprit's cap and shroud,
 Devoid of specious art—
With gentle impulses endowed,
 May beat a kindly heart.
Plead not for mercy, then, yourselves,
 When, with the strangling cord,
And sacrilegious hand, you mar
 The image of the Lord. . .

How *can* you *know* just how much time
 Your victim should be given,
For such repentance as shall send
 His spirit, pure to heaven ?
Supporters of the bloody code,
 We wait for your reply—
How is it, when *unfit* to *live*,
 A man is *fit to die* ?



CHAPTER XII.

PROGRESS OF PENAL LEGISLATION IN THE WESTERN STATES.

IN so commendable an undertaking, you have my best wishes for your success.—MARTIN VAN BUREN. (Extract from a letter to the author.)

HE “Great Northwest” seems to have made more substantial progress in the modification of her criminal laws, than other portions of the United States. This is attributable, in a great degree, to the liberal and enterprising character of her people, whose love of freedom, of untrameled thought, and of generous action, are far stronger than their attachment to *ancestral* prejudices, or *theological incongruities*. The West is particularly noted for the liberality which characterizes all her public enterprises; and in fields of legislation, the same liberal spirit distinguishes her people.

To Michigan belongs the honor of having first led the way in penal reform. It was this State which first *unconditionally* abolished the statute of “blood for blood.” This occurred in 1846, some *twenty-two* years ago; and no disposition has been manifested on the part of her people to return to the “hangman’s rope.” But as facts are more

potent than assertions, we give place to several communications from as many State Prison Inspectors, all bearing testimony to the wisdom of the "repeal." The first is from N. W. Clark, in response to a letter of inquiry relative to the practical workings of the new law.

STATE PRISON, MICHIGAN, *Feb. 4, 1859.*

HON. M. H. BOVEE,—*Dear Sir:*—The death penalty was abolished in this State in 1846, the law taking effect in June of that year, and it has not been restored since. The whole number of convictions for murder in the first degree, from the time the law went into effect to this date, is thirty, as follows:

In 1847, 1 conviction.	In 1854, 4 convictions.
In 1848, 3 convictions.	In 1855, 4 "
In 1849, 1 conviction.	In 1856, 3 "
In 1850, 3 convictions.	In 1857, 2 "
In 1851, 3 "	In 1858, 2 "
In 1852, 2 "	—
In 1853, 2 "	

Whole number in 12 years, 30

Of this number one has been pardoned, one's sentence commuted to hard labor for life (not solitary), one escaped, six have died, and twenty-one are now in solitary confinement.

As to the question: "Has crime increased since capital punishment was abolished?" I can only say, that it is the opinion of the undersigned, that it will be found, on comparison with the number of convicts in our prison at this time, with States where the death penalty is in force, of equal population, that our's will compare favor-

ably with them. We now have a population in this State of not far from eight hundred thousand. It is estimated by those who have the best means of judging, that of the whole number convicted of murder in the first degree, since the death penalty was abolished, not more than *half a dozen* of them would have been convicted had hanging been the penalty.

To the question, "Is public sentiment in favor of the present law?" I would refer you to a report of the committee of the Senate of this State (1859), to whom was referred so much of the Governor's message as relates to criminal jurisprudence and the State prisons, in which the committee say: "We feel proud that Michigan was among the first to abolish the retaliatory and barbarous code of 'blood for blood; ' that twelve or more years have now passed away, and the hands of our government have not been made red with the blood of legalized murder. We can not persuade ourselves to believe that the mass of our community, and especially the more enlightened, humane and Christian portion, are prepared, or are desirous, to return to the old law, and re-erect in every county a gallows, and make hangmen of all our sheriffs. If the question at this time was put to the electors of the State, it is believed that not more than one-fourth would be in favor of restoring the death penalty, which speaks volumes in favor of our present law."

I am, dear sir,

Yours respectfully,

N. W. CLARK,

State Prison Inspector.

Six years later we again sought information as to the continued operation of the law in Michigan. The subjoined letter from the Inspector confirms the statements of inspector Clark.

MICHIGAN STATE PRISON,

Jackson, March 15, 1866.

HON. MARVIN H. BOVEE,—*Dear Sir:*—Yours of the 16th ult. was duly received and contents noticed. I delayed my answer, hoping to be able to give you more full information, but will defer the answer no longer. I am unable to give you a comparative statement of the decrease of capital offenses since the abolition of capital punishment. Page 50 of Report for 1865, will show you the total convictions for murder in the first degree. A subsequent law allows the Board of Inspectors, in their judgment, to relieve solitary convicts and place them with the others, subject to their good behavior. *None* have been returned to the “solitary.” We have *five* in solitary, *three* of whom are insane. The *conduct* of those relieved from the solitary *is quite as good as the best*; we think *they give us the least trouble*.

I am fully confirmed in my own mind, from observation, that *society has not suffered from the abolition of the gallows*. Its re-introduction was mooted at the last session of our Legislature, but met with very little favor, either there or from the people.

I am, dear sir,

Yours very truly,

DAVID WINTON, *Agent.*

Two years later we again desired information, and received the following reply:

MICHIGAN STATE PRISON OFFICE,

Jackson, May 18, 1868.

MARVIN H. BOVEE, Esq.—*Dear Sir:*—Your favor of the 2nd inst. was duly received, in which you ask certain questions, to which I hasten to reply.

1. The number of life sentences for murder in the first degree, from 1859 to 1867 inclusive, a period of *nine* years, is *twenty-one*.

2. The general conduct of this class of convicts is *good*—will average quite as *good* or *better* than those confined for the minor offenses.

3. To your third inquiry, “Has the crime of murder increased since the abolition of capital punishment?” I answer that, from the best data and information to be had, I am well satisfied that it *has not*.

4. “Is the present law approved by the people?” It *most certainly meets the approval of a large majority of the people of the State.*

The question of “repeal” has been raised in some of our *ecclesiastical bodies*, as you may have observed, but seems to gain no favor from the laity of their denominations.

Our people show no disposition to return to the gallows.

I am yours, respectfully,

H. H. BINGHAM, *Agent.*

It is worthy of especial notice that during the first *twelve* years of the abolition of capital punish-

ment (from 1847 to 1859), in Michigan, there were *thirty* convictions for murder ; averaging (if we may use the phrase) *two and one half per year*. From 1859 to 1867, inclusive, a period of *nine* years, there were *twenty-one* convictions for murder, averaging exactly *two and one-third* per year. Here, then, we find, without alluding to the *increase* of population in this State, that there is a *decrease* in the percentage of what are termed capital crimes.

To place this matter in a clearer light, and to give final and conclusive refutation to the oft repeated assertion that capital crimes have increased in those States which have abolished the death penalty, we give the following mathematical answer : If, in the State of Michigan, there were *thirty* convictions for murder in *twelve* years, during which time the average population of the State was *six hundred thousand*, what maximum number of capital convictions would be permissible, without increasing the average, during the *nine* succeeding years, when the population of the State averaged *nine hundred thousand* ? *Ans.* $33\frac{3}{4}$. And yet we have but *twenty-one*. Thus we establish the fact, that there has been a marked diminution of capital crimes in the State of Michigan in consequence of the abolition of the penalty of death.

It will now be asked, “ why should the repeal of the death penalty decrease those crimes formerly punished with death ? ” *Answer* : The reverence for human life, which Michigan is now inculcating

in the minds of her people, by refusing to murder her criminals, has already had a salutary effect upon the morals of the inhabitants, who are constantly reminded that life is too sacred a creation to be destroyed at the will of the State ; and to the extent that this idea prevails, will be found an increased security for human life. In the language of John Bright, “a deep reverence for human life is worth more than a thousand executions in the prevention of crime, and is, in fact, its chief security against it.” For this reason, together with the greater certainty of conviction under the substitute penalty, (imprisonment for life) homicides have decreased, in Michigan, in consequence of the abolition of the penalty of death.

Wisconsin abolished the gallows in 1853, and the most satisfactory results have followed the abolition. Having resided for twenty-one years in this State, and having taken an active part in the legislative contest which resulted in the overthrow of the gibbet, we can bear testimony to the beneficial effects of the “repeal.” Homicidal acts are punished with more certainty than before the abolition, while the security of life has been promoted thereby. We give place to the letter of Commissioner McGraw :

WAUPUN, WIS., Nov. 16, 1859.

HON. M. H. BOVEE,—*Dear Sir:*—Yours of the 29th ult., asking me to give you the number of convicts now confined in this prison for murder in the first degree, the

number received during the present year, their general conduct, etc., was yesterday received. In reply, I will state the whole number to be nineteen. There have been none received during the present year, and but one since May, A.D. 1858.

With the exception of two, who are insane (one of whom came here in that condition), and one other, who has made two attempts to escape, I have never had the least trouble with them. As a general thing, they are much better men, men of more integrity, on whose words I can place more reliance, who have better moral perceptions, and are altogether of a higher order of being, than those imprisoned for minor offenses. You may ask, how the fact of their comparatively moral condition is reconcilable with the fact that they committed the greatest crime known to man?

In reply, I will state that about half of the number committed their crimes under the influence of ardent spirits, which others administered to them. These men, now sober, and, returned to their normal condition, are peaceful and well behaved. They were originally, and are now, as moral and as good, in all respects, as the average of society.

How long they would remain proof against the temptations which would assail them if liberated, is indeed a question. Some of the number committed their crimes under the influence of sudden passion, or under the pressure of real or supposed wrongs. Only three or four may be called deliberate murders.

You ask my opinion of the effect of the law abrogating the death penalty in Wisconsin. As I have always been opposed to taking "an eye for an eye and a tooth

for a tooth," my opinion may be taken with some allowance ; yet it seems clear to me that it must have a beneficial influence. Like all other reforms, the good effect is not immediately seen ; but I doubt if any other State, containing nearly or quite a million of people, congregated from nearly all parts of the world where life is taken for life, can show less than one murder in eighteen months. Yet this, as I have said, is all we have received in that time ; nor do I know of any now awaiting trial. I do not think any one of the number confined for murder here, thought for a moment about the penalty ; nor do I suppose this is very often the case till after the crime has been committed. As I am of the opinion that "like produces like," it can not be otherwise than that the adoption of a Christian system by the State government, must produce a Christian feeling among the governed.

Yours, respectfully,

EDWARD M. McGRAW,

State Prison Commissioner.

Commissioner McGraw states *the facts*, and then draws his own conclusions as to the effect of abolishing the gallows. It will be observed that his letter is conclusive as to the good resulting therefrom. Confirmatory of our position on this question, we yield space to the letter of Commissioner Cordier.

STATE PRISON, WAUPUN, WIS., }
Nov. 8th, 1867. }

HON. M. H. BOVEE,—*Dear Sir:*—Your favor, requesting certain information, is at hand, and I take pleasure in furnishing the information you desire.

Capital punishment was abolished in this State in 1853; and to you, who were the leader of the movement in the Legislature, and who are so familiar with the workings of the new law, it would seem hardly necessary to speak of its effects; but as information from Prison Commissioners is generally received with more satisfaction than that derived from other sources, I cheerfully send you the following for publication in your work.

The number of convictions for murder in the first degree, from 1853 (date of abolition of capital punishment) to 1859, is *nineteen*. From 1859 to 1867, *twenty-one*; total number in fifteen years, *forty-one*.

Of the number sentenced for life, *thirty* now remain; and of this class of prisoners, here let me say, that they are *decidedly the best behaved inmates* of the prison. I have had no occasion, during the six years I have been connected with this institution, to punish any one of the “life members;” and it is rare, indeed, that I have found it necessary to reprimand any of them. Of this class of prisoners, I have recommended the pardon of several; for their conduct, during a *long term* of confinement, has been *most exemplary*.

Of the number who have been pardoned, *none* have ever been returned here; and I have yet to learn that any one of the number has been guilty of any subsequent offense whatever. From my own intimate knowledge of the character of the inmates of this institution, I have

no hesitation in asserting that the "life members,"* taken collectively, are superior, in point of morals and good behavior, to those confined for the minor offenses. To many this may seem a strange assertion; but when we consider the fact that murder is usually the result of a combination of circumstances pressing heavily upon the morally weak or partially insane person, to which he yields, and which might never again assail him, the conclusion seems irresistible, that his crime is not so much the manifestation of a depraved and corrupt heart, as the result of the inflexible control of circumstances which, for the once, surround him; and which, in all probability, would never again environ him. In proof of this statement, let me cite the fact, that the *average age*, when convicted, of the life-sentenced prisoners in this institution, is *thirty-six years*; six of the number being *over fifty* years of age, and but six of the whole number being *under twenty-five*, while a majority of the whole number had passed the age of *thirty-five* years at the time of their conviction; nor can I learn that prior to their conviction, had any of these prisoners been guilty of other offenses.

I make these statements to correct a very erroneous impression which exists in the minds of men, viz.: "that this class of criminals would, as a matter of course, again murder, if restored to society." On the contrary, I am of the opinion that these men, without, perhaps, an exception, would never again commit a similar crime; and for the reason that the *memory* of the crime, the exposure, the trial and public conviction, would, in their

* Those confined for murder.

very nature, too forcibly remind them that vice and crime will ever bring their own punishment.

Wishing you continued success in the cause to which you are devoting yourself, I remain,

Yours, faithfully,

H. CORDIER,

State Prison Commissioner.

By an examination of the letter of Commissioner McGraw, it will be found that during the first *six* years subsequent to the repeal of the death penalty, in Wisconsin there were *twenty* convictions for murder, being an average of $3\frac{1}{3}$ per year.

Commissioner Cordier reports *twenty-one* convictions during the *eight* years subsequent to Mr. McGraw's letter (from 1860 to 1867, inclusive); giving us the average of *two and five-eighths per year*.

Let us again mathematically illustrate this point: If, during the first *six* years succeeding the abolition of capital punishment in Wisconsin, when the State contained an average population of six hundred thousand, there were *twenty* convictions for murder, what should be the *maximum* number of convictions, without increasing the average, during the *eight* succeeding years, when the average population of the State was *nine hundred thousand*? *Ans. Thirty-eight.* And yet the Commissioner reports but *twenty-one* convictions. Here, then, we have the facts and figures, proclaiming the long-coveted information, that, with the *abolition* of capital punishment, the

decrease of homicidal acts, is marked and conspicuous.

Having established, by indubitable proof, the *fact* that the *disuse* of capital punishment is followed by a *decrease* of capital offenses, the reader may again ask: "Why should this be so?" The answer is plain. *Legalized* murder begets a thirst for human blood, and *lessens* that respect for human life which the *abolition* of capital punishment ever *increases*; and with an *increasing* reverence for human life, crimes against persons necessarily become *fewer*. The subjoined letter from Hon. C. A. Eldredge, one of the prominent statesmen of our country, affirms the same principle:

WASHINGTON, D. C., Dec. 29, 1868.

HON. MARVIN H. BOVEE, EAGLE, WISCONSIN:

My Dear Sir :—I have had so much to do, that I have not before been able to reply to your letter of the 24th ult.

You propound the questions: "Do you consider the death penalty necessary to the security and well-being of society? Would its total abolition be followed by an increase of those crimes which it is now supposed to prevent?" I answer, that I have considered these questions *for years*, and *do not* consider the penalty of death necessary to the well-being of society, or that its infliction has any effect to lessen the commission of those crimes it is intended to prevent.

I have not time now to elaborate the arguments, or

even to state them, by which my mind has come to this conclusion. The right of human societies to take the life of a citizen is, in my judgment at least, extremely doubtful. Its effect, I believe to be, to make human life less sacred in the eyes of the people, and hence less secure. I have seldom ever heard of a murder, whether by individual or individuals, that was not almost immediately followed by *one or more* in the same locality. Suicides in neighborhoods are generally succeeded by others. Wars, which always beget a disregard of human life, are followed by many brutal murders and assassinations. Blood generally demands blood. Life is a mysterious and sacred principle. Let societies consider it too sacred for one mortal to take from another; and in proportion as that idea becomes controlling, and shall prevail, will be the safety for human life.

Yours, very truly,

C. A. ELDREDGE.

We conclude this chapter by inserting the following letter from Gen. Washburne, which was sent us several years since, for publication in this volume:

— LACROSSE, Wis., Oct. 24, 1860.

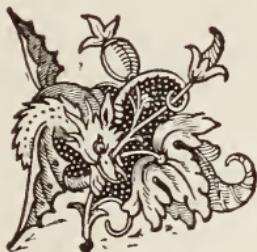
HON. MARVIN H. BOVEE — *Dear Sir* :— Your favor of the 4th inst. has been received. I have long known of your efforts in behalf of the abolition of that relic of barbarism,— capital punishment. I am glad to know that you are about to embody your views in a work upon that subject. I cheerfully answer your interroga-

tories by saying that, in my judgment, the death penalty is not necessary to the security or well-being of society, nor would its abolition tend to increase crime.

With sentiments of regard,

I am, truly yours,

C. C. WASHBURN.



CHAPTER XIII.

PROGRESS OF PENAL LEGISLATION IN THE WESTERN STATES (CONTINUED).

“If you destroy the gallows, you carry one of the strongest outposts of the devil.”—THEODORE PARKER.

N the winter of 1859, the author of this volume canvassed northern Illinois in advocacy of the *anti-capital punishment* cause. Many petitions were forwarded to the Legislature, then in session, and reference of the same was made to an appropriate committee. This committee reported a bill abolishing *public* executions, which, until that time, had been permitted by the laws of the State. This was a point gained, but not all that was desired.

In 1866, two young men, of the ages of *eighteen* and *twenty*, respectively, were placed upon trial, at Springfield, Ill., for the crime of murder, and were, by confession, convicted and sentenced to death. The youthfulness of these criminals excited our sympathies in their behalf. We addressed to Gov. Oglesby, the following public letter, which appeared in one of the prominent Chicago journals :

*To His Excellency, GOVERNOR RICHARD J. OGLESBY,
Executive Chamber, Springfield, Ill.*

DEAR SIR:—Through the public journals of the metropolitan city of your State, I learn that, at a recent term of the Sangamon County Circuit Court, Judge Rice presiding, one Barney Vanansdell and one James Lemon were duly convicted for the crime of murder, one John Saunders being the unfortunate victim of the fatal attack, which occurred on the 7th day of March, 1865, in the said county of Sangamon.

I have no official information of the judicial proceedings of this trial, nor is it important to the object I have in view in addressing you, only so far as it is ever desirable to state facts in a published communication. If, then, the public journals have correctly reported the proceeding of the trial referred to, we are given to understand that the *men* who have been sentenced to die on the gibbet on the 22nd of the present month, are quite young, neither having attained the age of *twenty* years.

I have never, on any occasion, nor under any circumstances, appended my name to a petition asking the Executive of any State to pardon, or commute the sentence, of any individual convicted for crime. I have assumed this attitude, not, I trust, from any lack of benevolence in my composition, but simply from the stern conviction that, in order to effectually secure the speedy amelioration of our penal code, odious laws, equally with good ones, should be rigidly enforced. The thorough enforcement of all laws is the best test of their efficacy and virtue, and when severe and cruel laws are thus enforced, they speedily become so abhorrent to the public mind, that other statutes, more benign in their oper-

ation, are thereupon substituted. An unjust law, if not enforced, in consequence of a laxity of purpose on the part of its administrators, induced, perhaps, by a dislike of its provisions, is often retained for many years, whereas its thorough enforcement would become so repugnant to the public sense, that its repeal would be thereby insured. In this aspect of the case, and believing that by submitting to temporary evils that final and lasting good may come, I have hitherto declined making efforts in special instances for either pardons or commutation of sentence, believing that every extension of mercy, in either capital or other crimes, only retards progress in the cause of penal reform by the retention of cruel laws which, if uniformly and rigidly enforced, would be more speedily abolished from the very repugnance which their execution incites.

It is, my dear sir, the youthfulness of these condemned criminals that has arrested my attention, and so far enlisted my sympathies as to lead me thus publicly to address you, trusting that, in the clear light of Executive duty, you may be enabled to commute the sentences of these young men from death on the gibbet to imprisonment for life. Were there no other motives to prompt my action than simply asking, in behalf of these young men, a continuation of that lease of life which God has given them, and to which they are entitled by virtue of their creation, I should have remained silent; but there are higher and more sacred considerations involved in this question. You, sir, have the honor of filling the Executive chair of a great and prosperous State — a commonwealth of nearly if not quite two millions of people, a very large proportion of whom are highly intelligent, moral, and upright. This large class of your citizens can not be unmind-

ful of the fact that capital punishment has not accomplished the object for which it was primarily instituted — that in endeavoring to preserve human life, it has only engendered and begot the very crimes it has sought to prevent; that instead of becoming the repressor of crime, it has become the great progenitor of evil.

The unconditional abrogation of the death penalty has taken place in several of the States of this Union, and with the most gratifying and happy results. Indeed, so highly satisfactory has the experiment proven to the people residing therein, that there is scarcely a possibility that capital punishment will ever again be revived where the modified law has been so thoroughly tested. Michigan abolished the death penalty in 1846, and for *twenty* years has successfully demonstrated that the lives and property of her citizens are just as secure *without* as *with* the gibbet. Rhode Island abolished the death penalty in 1852, and for *fourteen* years has been rid-den of the law of demoralization and death, and has never shown any evidence of retrogression from the position she so nobly assumed. Wisconsin abolished the death penalty in 1853, and for *thirteen* years has discarded the idea that life can be ren-dered safe only through the *judicial* murder of the criminal. In all of the States named, repeated and persistent efforts have been made to revive the law of "blood for blood," but each and every effort has been attended with signal and complete failure. Frequent reports from the State Prison Com-mis-sioners and Inspectors of the several States referred to, which are in my possession, bear concurrent tes-timony to the beneficial workings of the law which punishes the crime of murder by imprisonment rather than death; and I would here say that the

State of Illinois, with but about twice the population of Wisconsin, has a far *greater number* of murders committed within her borders, *according to her population*, than the State of Wisconsin referred to. This statement is made, not with a view to disparage or underrate the virtue or morality of our sister State, in whose prosperity and advancement I feel a just pride, but simply to illustrate the important fact, that cruel and barbarous punishments, when inflicted by a State, are not the best modes of encouraging or perpetuating virtue among the people. If the taking of life by individual man be called a *crime*, how can a *similar* act by process of law be termed a *virtue*? If a State can punish crime in no other way than by imitating the crime committed, then, indeed, its penal code has no other foundation except in vengeful retaliation.

It is said that the punishment of crime is *three-fold* in its nature, contemplating in its application *three* specific objects, first of which is the *reformation* of the criminal; secondly, the *protection* of society; and thirdly, the *restraint* imposed upon the criminally inclined. If these be the objects of punishment, then, indeed, has the death penalty fallen far short of accomplishing either one of the objects named; for capital punishment *destroys* without *reforming* the criminal, while all history proves that in securing protection to society, or in deterring the commission of crime, its failure has been most marked and conspicuous. Accomplishing but little good and vast injury, it is, indeed, strange that so abhorrent a punishment should still be retained upon the statute books of many States professing high Christian civilization. My theory of punishment would be summed up in these few words:

Penalties that do not contemplate the reformation of the criminal are not punishments, but cruelties.

It is but a few years since public executions were authorized by the laws of Illinois. These exhibitions of *legal* murder, once witnessed by thousands, are now somewhat exclusive and private in their nature. But few are now admitted to witness the ingenious process by which a human soul is launched from time into eternity. Why the abolishment of these public spectacles? The answer is plain: the State of Illinois lost confidence in the moral efficacy of public executions, and by its abolition *tacitly* admitted its failure to minister to the moral welfare of her people. And yet, sir, if the death penalty, as some allege, possess a restraining influence upon the vicious, why not erect the gibbet in your public marts, and beside your churches, that the rising generation may profit by the moral lessons which the friends of the gallows claim that it inculcates? But, sir, we are all too well aware of the debasing influence and demoralizing effects of public executions, and what is true of these public exhibitions is also true of private executions, only in a lesser degree.

If the penalty of death shall be inflicted upon Vanansdell and Lemon, what will have been gained for morality or justice? The execution of these young men simply destroys their *visibility* to the *physical eye*, but it harms not the spirit which controls and makes use of those physical organizations; neither does their execution blot out their crime, nor the remembrance of it; nor does it restore the unfortunate John Saunders to life, family, or friends. Does, then, the execution of these young men accomplish nothing? On the contrary, a vast deal. Accomplishes *much* evil, but *no* good. The gallows

is the brutal assailant of public virtue and private feeling. It disturbs the moral element of society, by its assault upon the feelings of the virtuous, the sympathetic, the noble, and good, while it whets the appetite and arouses the bloody instincts of the groveling and the debased. The gallows essays to perpetuate virtue, and strikes it down in the self same instant. It mocks at Christianity, by destroying the physical organization of the criminal, while urging its *religious agents* to labor for the salvation of the immortal spirit which it has just *forced* from its *earthly tenement*. Hideous spectre of the past! Born in barbarity, cradled in hate, and nursed with blood, it has grown a giant fiend, whose power, once great, now nearly gone, is soon to be dispelled by the light of a higher and more ennobling civilization.

There is one point, my dear sir, to which I would call your especial attention. We have but recently passed through a war of most gigantic magnitude. It has been prosecuted with all the power and vigor which our vast resources of men and money could bring to its support. The loss of life has been fearful to contemplate, while the expenditure of money and waste of property are almost without a parallel. The compensation for these evils rests solely in the triumphant success of that cause for which the God of battles was invoked. War is ever accompanied by innumerable evils. However glorious and patriotic the cause for which war may be prosecuted, the demoralizing effect upon the public mind is ever apparent. Ours has been no exception. Since the breaking out of hostilities, the general respect for human life has been very much lessened, while the debasing effect upon the minds of very many who were immediately engaged, is noticeable by all.

The killing of thousands is not well calculated to inspire feelings of reverence for human life, but, on the contrary, often stimulates the worst passions of man.

I know not, nor is it important to know, whether Vanansdell or Lemon, or both, took part in the strife of battle for the maintenance of the Union. Whether they did or did not, it is nevertheless certain that they have been cognizant of the general affairs of our government for the past four years. They may, notwithstanding, be very ignorant young men, and not sufficiently skilled in that branch of governmental science by which an individual is enabled to draw that *very nice distinction* between the *laudable virtue of killing* by national authority, and the *reprehensible criminality of killing* upon individual responsibility. This distinction is accurately made by men of legal acumen, who are well versed in the abstruse science of political ethics, and is generally made clear to those statesmen and diplomatists who are connected with the Government. Vanansdell and Lemon may not have made the distinction. The enormity of their crime may not have been so fully apparent to them before as after the commission of the act, and it is to be hoped that they now see and feel the wrong they have done, not only to community, but to themselves, and that in the prolongation of their existence, which boon to bestow, rests in the hands of your Excellency, they may become wiser and better men.

I have not lost sight of the important fact that your Excellency represents the executive, and not the law-making branch of your State Government; and that while the law of Illinois imposes the penalty of death for the crime of murder, and courts have no alternative but to pronounce sentence when conviction has taken place, I am also conscious that

the organic law of your State, the Constitution of Illinois, places within your official keeping, the high and sacred prerogative of life and death in certain cases; and that the proper exercise of the function of mercy is as clearly and indisputably your right, as it is the right and duty of juries to convict, and of courts to sentence. It only remains for you to determine whether the ends of justice will be best subserved by granting a commutation of sentence in the cases of Vanansdell and Lemon. Death is the common lot of all. If you see fit to modify the sentence of the court, no injurious consequences can possibly ensue. You have the power to rob the gallows of its victims, but the grave will eventually claim its own. It is the great leveler of human distinctions and earthly greatness. The kingly robe and beggar's rags find one common level. The pomp and splendor of earth must all pass away, but *good deeds* will live in the *eternal world*.

It is said, "in the beginning God created the heavens and the earth;" and when the Omnipotent hand had prepared the earth for the habitation of the human family, he said, "let us make man;" whereupon Justice, with stern and relentless visage, said, "make him not, O God, for he will disobey thy commandments, and violate thy holy laws; make him not, O God!" But Mercy, with countenance benign, beaming with the radiance of purity and love, in tones of supplication, plead for his creation. "Make him, God, for though he violate thy commands, and transgress thy holy laws, I will be with him in his days of trial and will plead for his forgiveness; I will be with him in his darkest hour and greatest need. Create him, O God!" And God listened to the voice of Mercy, and created man, not only a just, but a merciful being.

If, in the careful consideration of the claims of Barney Vanansdell and James Lemon to a continuation of that life which was given them by their Creator, you shall become satisfied that nothing will be lost to justice, while much may be given to mercy, by a commutation of the sentence of the court in which they were found guilty, rest assured that your official action will be approved by the great majority of the people of your State, and will be especially commended by the virtuous and good.

I am, dear sir, very respectfully,

Your obedient servant,

MARVIN H. BOVEE.

EAGLE, Wis., June 14, 1866.

The object sought in the above communication was a commutation of sentence. Strenuous efforts were made by influential citizens of Springfield to prevent so shocking an occurrence in that beautiful city, as the *judicial* murder of the two young men; but in vain. They were executed; and the rope which broke the neck of the one young man, broke the heart of the mother, who survived him but a few days.

During the following winter (1867), the author of this volume inaugurated a systematic agitation of this question in Illinois, having in view the abolition of the death penalty in this State. The movement was *practically* successful. A law was enacted empowering juries, in cases of conviction for capital offenses, to prescribe the nature of the penalty, which might be death on the gallows, imprison-

ment for life, or imprisonment for a term of not less than *fourteen* years, it being discretionary with the jury to determine the nature or duration of the penalty. For nearly *two* years this law has been in operation, and no execution has taken place under its provisions. Society has been just as safe *without* the hangman's rope, as it formerly was *with* it; while the moral feelings of the people have been undisturbed by the horrors of legalized murder. The bill, which afterwards became the law referred to, was drafted by Gen. S. A. Hurlbut, of the Assembly, who gave to the measure efficient support, in which he was well supported by Hon. H. C. Childs, of DuPage, Hon. Mr. Yeager, of Alton, and others. It is believed that Illinois will take no *retrogressive* step on this question.

The following letter from Judge Knowlton, of Chicago, formerly of Wisconsin, will be found important in connection with a fact which State prison Commissioners invariably sustain, viz.: that persons guilty of *homicidal* acts are not, in all cases, necessarily depraved or corrupt:

CHICAGO, ILL., Feb. 15, 1867.

HON. M. H. BOVEE — *My Dear Sir:*— Your favor of the 12th ult. has just reached me, and I reply to your interrogatories with pleasure.

First Interrogatory — During your practice, how many persons have you defended who were placed upon trial for murder or manslaughter?

Answer — I think, *ten*; but my memory only recalls the *names* of seven.

Second Interrogatory — Of the number so defended, how many were acquitted?

Answer — I am happy to say that only *one* of the whole number was convicted, and *that* conviction I procured the reversal of, by the Supreme Court of Wisconsin, when he was unhesitatingly discharged without any further proceedings against him.

Third Interrogatory — Of the number so acquitted, how many did you believe guilty of the crime for which they were indicted?

Answer — There was not a particle of doubt, that all but two had each killed a man. As to those two, I can hardly feel justified in stating my belief, as it is not sufficiently free from doubt upon the subject.

Fourth Interrogatory — What has been the subsequent character of the individuals thus acquitted?

Answer — In every instance, good. If any difference, better than before; and as to some of them, I know their subsequent conduct was most exemplary; and as individuals, valuable members of society.

Fifth Interrogatory — Do you consider the death penalty necessary to the security and welfare of society?

Answer — I most unhesitatingly say that *I do not*. Severe penal laws have, at all times and in all countries, (if we may believe history, or our own senses on the present state of society) proved to be gigantic failures. Not even the fear of the Future can prevent *suicides* of equal numbers in a given population, during a like period of time, whatever be the climate or form of government.

This has, as you are aware, been shown by statistics gathered by Buckle.

Sixth Interrogatory — What would be the probable effect of abolishing the gallows in the State of Illinois?

Answer — Judging from absolute experience in other places,—a decided diminution in the number of annual homicides, should the death penalty continue abrogated for five or ten successive years. I should not anticipate much difference for the first two or three years.

You are engaged in a noble and most humane undertaking; and I sincerely hope you may succeed in getting the odious death penalty expunged from the statute books of this State, and I could wish, were it not too much, in all other places.

Very truly yours,

J. H. KNOWLTON.

In the month of February, 1868, we were invited to address the Legislature of Minnesota in support of our views on the capital punishment question, to which invitation, favorable response was given, and the address was delivered in the Hall of the Assembly; his Excellency, Gov. Marshall, presiding at the meeting.

A law was enacted, during this session of the Legislature, which *practically* abolishes capital punishment. Its provisions are similar to the Illinois law, and gives to the jury *discretionary* power to affix to their verdict of guilty, the penalty of either death or imprisonment. No person has been executed under this law.

Much credit for the consummation of this measure is due to the Hon. N. H. Miner, of Stearns county, who introduced the bill in the Assembly, and pioneered its march through both Houses of the Legislature.

The capital punishment law of Indiana empowers juries, in the trial of criminals indicted for murder in the *first* degree, to render a verdict of murder in the *second* degree, should circumstances so far mitigate the guilt of the accused as to justify such a verdict. This law, in effect, very nearly abolishes the death punishment.

Ohio still clings to the barbarous law; but the reform element is strong and active in this noble State; and but a short time will elapse before the death punishment will be effaced from the statute book of the "Buckeye" State.

Iowa, Missouri, and Nebraska, will, ere long, abandon the law of "blood for blood;" and, in the substitution of a milder, but more efficacious penalty, will furnish additional evidence that the Great Northwest is the favored home of progress and reform.

Kentucky still maintains her hold upon the gallows, but with a weakening grasp; and must, ere long, take her position beside those States which have declared against the farther use of the gibbet as an auxiliary of good government.

We can furnish no satisfactory information relative to the progress of our cause in those States

lately in rebellion. The recent war left that section of the Union in so unsettled a condition, that no correct estimate of public sentiment on this question can, at this time, be made.

The general aspect of the whole question, in the United States, is, indeed, most gratifying to every friend of penal reform. Whilst the Eastern and Middle States have made substantial progress in the right direction, the power of the gibbet is completely broken in the Great Northwest. But a few years will have passed away, ere the gibbets of America will be remembered only as a horror of the past.

The moral forces which are now at work in behalf of this reform, can never cease until this relic of a cruel and barbarous age, is effaced from the statute book of every civilized government upon the face of the earth. The noble and good men of this country are taking bold ground against the farther continuance of this abominable law. Not only have our prominent *authors*, *statesmen*, and *divines*, united in condemning this law, but several of the greatest of American *poets* have kindly expressed their approval of our course by sending, for publication in this volume, their objections to the "barbarous law."

We herewith insert the letter of the venerable editor of the *New York Evening Post*, who has ever been a firm and consistent opponent of capital punishment:

NEW YORK, May 12, 1868.

My Dear Sir :— I am heartily with you, as you know, in your warfare against the barbarous practice of punishment by death; and my prayer is that your labors may be crowned with perfect success. Sooner or later, I am confident that the infliction of the penalty of death by the law, will become as obsolete throughout the civilized world, as torture by the rack.

I would willingly contribute something for your work, if I thought myself able to place the question in any new light, and if my occupation allowed me sufficient time for the purpose. At present, I can do no more than to express my great satisfaction that you do not mean to relax your noble exertions in the humane cause to which you have hitherto devoted yourself.

I am, sir,

With great regard, yours truly,

W. C. BRYANT.

HON. M. H. BOVEE.

John G. Whittier, whose poems, like Mr. Bryant's, have filled the soul with sweetness, sends us encouraging words to be placed in this volume:

AMESBURY, MASS., 1, 11th mo., 1868.

M. H. BOVEE, Esq.—*My Dear Friend* :— The state of my health compels me to give only brief answers to thy queries.

I have given the subject of capital punishment much consideration, and have no hesitation in saying that I do not regard the death penalty essential to the security and well-being of society; on the contrary, I believe that its total abolition, and the greater certainty of conviction which would follow, would tend to diminish, rather than increase, the crimes it is intended to prevent.

Wishing thee God speed in thy labors to remove from our statute books this relic of barbarism,

I am, very truly, thy friend,

JOHN G. WHITTIER.

Ever grateful for woman's influence in behalf of the work in which we are engaged, we insert the following letter from Miss Cary:

NEW YORK, Sept. 28, 1868.

HON. M. H. BOVEE—*My Dear Sir:*—On my return from the country, I found your favor, requesting an article embodying my views on capital punishment. I can not, probably, add any thing to the force of what must have been already said by your contributors against that crime of crimes,—capital punishment. As I regard it, the *second* murder is worse than the *first*; for the *first* may have been attended with extenuating circumstances, — not so, the *second*.

I believe all crime to be insanity, and that, until it

shall be treated as such, we shall find no betterment in governmental affairs.

Wishing you every success, I am,

Yours, very truly,

ALICE CARY.

Prof. Longfellow, prior to his departure for Europe, in June last, sent the following words of encouragement for a place in this volume :

CAMBRIDGE, MASS, *May 22, 1868.*

MY DEAR SIR:— In reply to your letter, I beg leave to say that I am, and have been for many years, an opponent of capital punishment. It would be useless to state my reasons. They are, in the main, the same, doubtless, as those which influence your own action in the matter.

Wishing you complete success in effacing the death penalty from all the statute books of our country,

I remain,

Yours, very truly,

HENRY W. LONGFELLOW.

HON. M. H. BOVEE.

With so many good words for the “Right;” so many words of personal encouragement to aid our labors, we shall continue to devote to the cause of Penal Reform whatever of ability or energy we may possess.

As the tempest-tost mariner, unmindful of the threatening waters which surround him, fixes his eye upon the “polar star,” as the beacon light of his salvation, so, with faith and hope in the “Star of Bethlehem,” which, nearly nineteen hundred years ago, shone upon the gloomy waters of error and despair, that the children of men might see and live, should all endeavor to cherish and cultivate feelings of Christian kindness toward all mankind, in remembrance of Him who came to establish peace on earth, “good will to men.”





CHAPTER XIV.

CHRIST AND THE GALLOWS.

"Recompense to no man evil for evil."—ROMANS xii. 17.



N the preceding chapters we have discussed the Capital Punishment question in its moral and practical bearings upon human society. The right of a State to take the life of the individual, as a punishment for crime, has been explicitly denied, while the sacredness of human life has been constantly upheld. Insanity, as a predisposing cause of crime, has been carefully discussed, and the *judicial* murder of innocent persons clearly established. The death *menace* as a deterrent of crime is shown to be a miserable failure, and the lessons of the gallows proven to be most pernicious in their effects upon both the criminally inclined and the morally good. The practical effect of abolishing the death penalty, as illustrated in those States which, for a long time, have refused to *murder* their criminals, is shown to be of the most beneficial character. Every argument, save one, in favor of the further retention of the gallows, has been carefully discussed, and, as we think, satisfactorily answered.

The last, and by many considered the most formidable, objection to the abolition of the death penalty is now to be critically examined.

When the advocates of the gallows find themselves driven from every position (which has been already discussed in the preceding chapters), the Divine authority of the Scriptures is cited as conclusive proof of the necessity of capital punishment. Let us now examine the Scriptural argument.

“Whoso sheddeth man’s blood, by man shall his blood be shed: for in the image of God made he man.” This passage of Scripture may be found in Genesis ix. 6.

It is scarcely possible to estimate the importance which is attached to the above text by that portion of the religious public which maintains the gallows as a Divine institution. No toy in the hands of a child was ever held in higher esteem than is this same passage of Scripture by those theologians who possess so peculiar a reverence for the gallows. One can hardly realize that the text referred to has so important a bearing upon the question under discussion, until it is observed that so many prominent *divines* tenaciously cling to it as the great bulwark of defense for the law of capital punishment. And it will be further noticed that no other passage in the Bible is regarded of sufficient force, in the discussion of the question, as to merit repeated quotations in maintenance of the death penalty. It is this text which is so often cited in lyceum debates; so frequently quoted in legislative halls, and so often thundered from pulpits and platforms in defense of the “barbarous law.” It is the grand cap-

stan around which coils the hangman's rope. "It is," as a distinguished theologian declares it, "the citadel, commanding and sweeping the whole argument."

The Rev. Dr. Sprague, of Albany, one of the most eminent of American divines, a gentleman whose deep religious convictions and purity of heart have made him universally respected, is compelled to acknowledge that, in this connection, the dictates of his better feelings are at war with what he conceives to be his religious duty. In a letter to us, on this question, Dr. Sprague concludes as follows:

"But I am free to say that if this passage (Gen. ix. 6) were not in the Bible, I should, in obedience to the dictates of my feelings, be found upon your side."

From this it would appear that many highly-esteemed religious people are opposing the progress of a reform which engages their holiest sympathies, simply because a passage in the first book of the Pentateuch reads, in our English version, "Whoso sheddeth man's blood, by man shall his blood be shed." It is evident, therefore, that there should be a summing up of the arguments which seek to reconcile this passage of Scripture with the "dictates of our better feelings."

Previous to an examination of the text, it would seem as if it must have a meaning which is in perfect harmony with the purest sympathies of the good. It seems impossible that the Word of God, *delivered* to His servants of old, can be so radically opposed to the Word of God *written* by His own finger on the soul of every pure and loving child of His. It must weaken the hold which the Bible has upon the reverence of

men as the inspired Word of God, if it be so often found in conflict with the promptings of our holiest feelings.

And furthermore, the probabilities are greatly against an interpretation of a passage of ancient Scripture, which brings it in violent contact with so humane a movement as the abolition of the death punishment, or else greatly against the Divine origin of that ancient Scripture. Whoever accepts the passage above referred to as the Word of God, is under the most solemn obligations to find some interpretation of its meaning which will bring it in harmony with the ideas of justice, and mercy, and sound policy, which society has learned from Jesus Christ. If the language will bear a meaning which, without gross violence, does not make it command what is so cruel, impolitic, and revolting in the execution, such interpretation should be very welcome to every one who loves his Bible and his neighbor as himself. And if an interpretation can be found which, without any violence to the meaning of the words, produces this needful reconciliation, the probabilities are certainly in favor of that rendering.

But without regard to any antecedent probabilities in its form, we submit the following explanation as the only one which it will bear without an obvious disregard of the connection in which it is found. It occurs in connection with God's blessing upon Noah and his sons, in the second infancy of the human race. Here, as in His blessing upon Adam in the first infancy of the human race, He would impress upon man the thought that he was lord of all the inferior creatures,

the crowning glory of creation. Therein is he an image of God. This appears from Genesis i. 26,—“Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.” So, in the following passage, Genesis ix. 2,—“And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea; into your hand are they delivered.” Thus it will be seen that man is the lord of creation; nothing shall take his life with impunity. His blood shall be avenged. We quote again, 5th verse:—“And surely your blood of your lives will I require: at the hand of every beast will I require it, and at the hand of man; at the hand of every man’s brother will I require the life of man.” Then follows the passage in dispute.

Thus far the context declares the superiority of man’s life over the beast’s life. Hebrew scholars tell us that the word translated “*Whoso sheddeth*,” is a present participle corresponding to our English word *shedding*, and that we must supply the ellipsis by such a pronoun as the sense obviously requires,—*whatever* or *whosoever*. According to the context, then, it should read, “*Whosoever beast sheddeth man’s blood, by man shall its blood be shed.*” And why this superior sacredness of man’s life over a beast’s? “*For in the image of God made he man.*” This latter portion of the text seems to furnish the reason why the injunction, “*Whoso shed-*

deth," &c., should be carried into effect. Now it seems plain that if man was to be the object of vengeance, the explanatory context would seem utterly absurd. To illustrate:

An officer of the law is about to execute the sentence of death upon a human being. When we demand of him the reason for such brutal action, he replies: "Whoso sheddeth man's blood, by man shall his blood be shed." Yes, we reply, but why do you kill your brother? He replies: "For (because) in the image of God made he man." The absurdity of the explanation (hanging a man because he is made in the image of God) will be at once discernible to every individual. Taking the more consistent translation of the text in dispute, we again illustrate:

A man is about to kill the rabid dog, or the ox that gores. We address him with the interrogatory—"Why do you wish to kill that animal?" The reply comes: "Whatsoever beast sheddeth man's blood, by man shall its blood be shed." Very true, but why kill the beast? He answers: "Because man was made in the image of God; that image is sacred and must not be marred, and the beast that mars or destroys that image must surely die." Here, then, we find a rational solution of the whole text.

The reason here given for taking the life of the beast would be no reason at all why one man should take the life of another, since the slayer and the slain are both alike made in the image of God. Can it be said that he who has taken the life of man is no longer an image of God? We answer, that such an admission is

fatal to the theory, by proving a great deal too much. If C. must take B.'s life because B. took A.'s life, then D. must take C.'s life because he took B.'s life, and so on to the end of the bloody alphabet; for the text makes no distinction whatever as to the object for which life is taken.

If the passage of Scripture now under discussion were enacted by Deity, and by Him intended as an everlasting statute and of universal application among the children of men, then, indeed, has it been held in utter disregard by every civilized government upon the face of the earth, and by every advocate of the gallows who claims so much for it. For if this text is to be regarded as the stern mandate of Jehovah, and is to be observed with literal exactness, then, indeed, would its very supporters cry aloud against its further retention; for it will be observed that there are no qualifying clauses in the commandment referred to.

To put this matter in a clearer light, we will place, in the form of a dialogue, what we desire to say; merely remarking that said conversation, almost *verbatim*, occurred between a clergyman and ourself; the clergyman maintaining capital punishment, and agreeing to rest the whole question upon the single passage of Scripture, "Whoso sheddeth man's blood, by man shall his blood be shed."

Question. "Then you regard this passage of Scripture as of Divine origin, and one which enjoins capital punishment in the most explicit manner?"

Answer. "Certainly, I do."

Q. "If, then, this be a commandment of Jehovah, imperative in its nature, ought it not to be uniformly and

rigidly enforced?"

A. "Certainly."

Q. "In this State, when an individual kills another in a moment of passion, what is the penalty for the commission of the offense? In other words, how do you punish the crime of manslaughter?"

A. "The crime of manslaughter is punishable by imprisonment for a term of years, or for life, according to the gravity of the offense."

Q. "Then you don't hang the criminal who has been found guilty of manslaughter?"

A. "No; for he did not kill with malice aforethought."

Q. "Then the text should read, 'Whoso *premeditatedly* sheddeth man's blood,' &c. But what disposition do you make of the lunatic, who, in his frenzy, kills several persons, even whole families?"

A. "He is sent to an asylum for cure."

Q. "Then you don't hang the lunatic?"

A. "No; he is not accountable?"

Q. "Then the passage should read, 'Whoso, with malice aforethought, and being morally responsible, sheddeth man's blood,' &c. But, when you have finally convicted an individual of the crime of *willful, premeditated* murder, how is the criminal disposed of?"

A. "He is hanged by the neck until dead."

Q. "Then you don't shed his blood at all?"

A. "The rope is substituted for the guillotine, it being deemed a better mode of execution."

Q. "Ah! yes; you have a substitute, then? Thank you for 'letting down the bars,' I'll go through with you. I also have a substitute, but mine is imprisonment."

From the above dialogue it will be at once perceived that the passage of Scripture so often quoted, if literally construed, proves altogether too much. Hence, no Christian government on earth can obey the literal command of this text if it be understood to establish capital punishment. The command is, "Whoso shed-

deth man's blood ;" but Christian laws say, "whoso, *except* those who did the murder *without* malice aforethought ; whoso, *except* the insane person ; and whoso, *except* those whom the authorities pardon."

If this text means what the friends of capital punishment claim for it, the magistrate who dares to pardon one who has taken man's blood, thereby commits a fearful sin ; and yet good men feel that the pardoning power is eminently proper when not abused. How can those who hold such a view ever sign a petition for the pardon of one who has been justly condemned to death, no matter how penitent he may be ? for the text makes no allowance for penitence. Indeed, so overwhelming do the arguments seem in favor of the interpretation we have suggested, that the question is brought to these alternatives,—either the common rendering of the passage is wrong, or the all-merciful God has commanded a punishment so cruel, so indiscriminating, and so revolting, that no government hesitates to make many exceptions in its execution, sometimes to refuse to execute it at all ; while the most Christian and most humane men of every community will often remonstrate against its execution even when the government wills it. We are at a loss to understand how such an arraigning of the Bible against our native sense of justice, mercy, and brotherly love, can be looked upon as loyalty to the Word of God.

We have thus far argued the question at issue upon our opponents' own ground, viz.: that the command is just as obligatory now as when it was first uttered. It seems clear, however, that other interpretations may

be given this passage without doing violence to the language in which it is clothed. The word *shall*, though in the imperative mood, is often used in the Bible in an indicative sense. For instance: "Bloody and deceitful men *shall* not live out half their days."—Psalms iv. 23. Again, "For all they that take the sword *shall* perish with the sword."—Matt. xxvi. 52. Here we find precisely the same form of the verb as in the passage under discussion, and yet all know that bloody and deceitful men *do* live out more than half their days; and we are all familiar with the fact that *all they* that took up the sword (during the recent war) *did not* perish with the sword. To affirm the literal fulfillment of the last two passages of Scripture would be a falsification of facts; and the only interpretation consistent with truth, is to construe them in such manner as will bring their interpretations in harmony with truth, and at the same time do no violence to the Word of God. These passages of Scripture convey, in plain and simple language, the idea that men who are violent in their passions, bloody in deeds, and deceitful in character, are very apt to shorten their days by their excesses, and may possibly meet violent death; and that they who take up the sword, referring, of course, to those who engage in dueling, war, and other kindred cruelties, will be very apt to perish by similar weapons in the hands of their opponents. In the passage of Scripture, "Whoso sheddeth," &c., the form of the verb is imperative as in the two other passages quoted, and yet there is no reason why the latter quotation may not be regarded as simply prophetic

language, as we have just shown in the preceding passages.

In 1846, the Rev. Dr. Cheever, of New York, published a defense of capital punishment, it being intended as a reply to O'Sullivan's report to the N. Y. Legislature. In discussing this very passage, "Whoso sheddeth man's blood, by man shall his blood be shed," Dr. Cheever thus speaks of the text in dispute:

"There is a wonderful explicitness, compactness, and authority in the terms in which it is expressed: it stands forth in these respects as prominently from the context as the commandments on the tables of stone stood forth amidst the ceremonial law and observances. Its manner is like the imperative comprehensiveness of the command, "Thou shalt have no other gods before me." Indeed, the same mode of arguing that would annihilate the general obligation of the ordinance given to Noah, would also displace the decalogue itself from its throne of divine authority and supremacy. We believe that this enactment possesses the same rank with reference to all penal enactments, that the commandments in the decalogue possess with reference to all moral duties. It stands at the head of the science of social and criminal jurisprudence, just as the statutes in the decalogue stand at the head of the science of Christian ethics."

Some few months since we addressed a brief note to Dr. Cheever, intimating that, as great progress had been made in the arts and sciences during the past twenty-five years, and as creeds had become softened, and penal codes had suffered important modifications during that period, it was quite possible that he himself might have changed his views on the question of capital punishment. We concluded the note by ex-

tending to the Rev. gentleman an invitation to write an opinion for publication in this volume, promising to make room for it even were his views diametrically opposed to our own. The invitation was accepted by him, and we here give place to his letter:

“NEW YORK, Feb. 10, 1868.

My dear Sir:

Three passages of Scripture from the Old and New Testaments are to my mind an undeniable and unanswerable proof as to the perpetual obligation of the law condemning the murderer to death.

Numbers, chap. xxxv. verses 30, 31, 33: ‘Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses: but one witness shall not testify against any person to cause him to die. Moreover, ye shall take no satisfaction for the life of a murderer, which is guilty of death: but he shall be surely put to death. So ye shall not pollute the land wherein ye are: for blood it defileth the land: and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.’ ‘The revenger of blood himself shall slay the murderer,’ verse 19, and others. Compare Exodus xxi. 12, 14, 15, 16, and Deut. xix. 12, ‘Deliver him into the hand of the avenger of blood, that he may die.’

Romans xiii. chap. 4th verse, ‘For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil.’

I. Timothy, chap. i. 8—11: ‘But we know that the law is good, if a man use it lawfully; knowing this, that the law is not made for a righteous man, but for the law-

less and disobedient, for the ungodly and for sinners, for unholy and profane, for murderers of fathers and murderers of mothers, for manslayers, for whoremongers, for them that defile themselves with mankind, for menstealers, for liars, for perjured persons, and if there be any other thing that is contrary to sound doctrine; according to the glorious gospel of the blessed God, which was committed to my trust.'

You say you admit that the Old Testament condemns the murderer to death. But the same law and condemnation are quoted from the Old and continued and applied in the New, as a law intended not for the Jews only but for all mankind, and still in force under the gospel, under the system of Christianity as preached by Paul, as under the Divine law promulgated and preached by Moses. If any one part of the law adverted to by Paul, as of the same authority under the gospel as under the Old Testament dispensation, has been abrogated, so has every other part.

Have you then received a new revelation, unknown to Paul, abrogating the penalty against murder? It is clear that Paul regarded the law and the penalty as of the same Divine authority, Anno Domini 66, as before Christ under Moses, 1490. Where have you learned or found the codicil to God's will, of which Paul, unhappily, was ignorant, abrogating that penalty? The references of Paul are so explicit and particular that there is no possibility of evading them. Menslayers, murderers of fathers and mothers, and menstealers, are set together, and Paul says that the law still holds against them all, and says nothing concerning any change in the penalty. He affirms the authority of the gospel as being the same with that of the law in regard to these crimes, as, in the passage quoted from the

Epistle to the Romans, he affirms the Divine authority of the avenging government with the power of the sword, as being universal. Permit me to ask again, where did you receive your information of this power being abrogated? There should be some very definite revelation on the subject. For if by assumptions or general reasonings, concerning the nature of benevolence as against the authority of justice, you can abrogate one precept and its penalty, so you can another. If you can take away the power of the sword, so you can of the prison.

There is no authority in the Bible for punishing men at all, if there be not for putting the murderer to death. But if your authority for punishment be only of expediency, then, in any case, whenever it is expedient to punish the murder by death, it is just and right. If to *prevent* murder by death is just and right, as in the case of war against pirates or the defense of one's household, it is equally just and right to punish its *commission* by death. Death is certainly as just after the crime is committed as when it was only attempted.

But I am writing at greater length than I intended. I am greatly obliged for the favor of your letter, and shall be very curious to see what is the kind of authority by which you set aside that of Moses and Paul, the two great inspired penmen of the Divine word in communicating the Divine will to mortals. My own judgment concerning the penalty for murder, being determined by the sacred Scriptures, will remain as of old, unless you can show me the chapter and verse in which the penalty is done away with, with as much distinctness as when it was first appointed.

Very respectfully and truly yours,
GEORGE B. CHEEVER.

P. S.—I ought perhaps to add that, as to Christian civilization, or its progress, I can imagine no higher form, expression or development of it, than that which is contained and provided for in the New Testament.

G. B. C."

It will be observed that the paragraph which we extract from Dr. Cheever's "Defense of Capital Punishment," published in 1846, is simply a laudation of the passage, "Whoso sheddeth man's blood," &c. He speaks of it as a command of "wonderful explicitness, compactness and authority;" of "imperative comprehensiveness," standing at "the head of the science of criminal jurisprudence." It was this passage of Scripture on which Dr. Cheever built his work: it was the burden of his argument in favor of capital punishment; like Aaron's rod, it swallowed up all others. And yet it will be noticed that in the letter just inserted, and which was prepared for this volume, not the slightest allusion is made to that passage of Scripture which was the "rock and the foundation" of his argument some twenty years ago. Why this change of base? Is the Noahic code entirely abandoned, and is Dr. Cheever now compelled to pick up fragmentary portions of the Mosaic code in order to revive that confidence which he seems to have lost in the command given to Noah? But let us accompany Dr. Cheever in his Scriptural researches, for the purpose of ascertaining whether he really possesses so deep and fervent a love for the old Jewish laws and ceremonies, or whether it will be found that the code of Moses is but a favorite resort of theologians to maintain capital

punishment and other kindred cruelties which can in nowise be maintained by the gospel of Jesus Christ.

If the passages in the Pentateuch, quoted by Dr. Cheever, are binding upon the children of men, then, indeed, are other passages found in the same connection, and promulgated by the same great law-giver, equally binding upon all. In Leviticus, chapter xxiv. verse 17, we find written: "And he that killeth any man shall surely be put to death." Verses 19 and 20 read as follows: "And if a man cause a blemish in his neighbor, as he hath done, so shall it be done to him; breach for breach, eye for eye, tooth for tooth." Let us inquire whether Dr. Cheever will advocate the enforcement of the whole code? If an individual assault another and destroy his eye or his limb, will Dr. Cheever insist upon the destruction of the eye or the limb of the offender? If not, will Dr. Cheever please give us his authority for disregarding one portion of the "Divine commands," and his authority for upholding the other? In the succeeding chapter, Leviticus xxv. 24, we read the following: "Both thy bondmen and thy bondmaids, which thou *shalt* have, shall be of the heathen that are round about you; of them *shall* ye buy bondmen and bondmaids." Dr. Cheever has been for many years a conspicuous anti-slavery man; and yet, in the laws given to Moses, we find due authority for the holding of slaves; and not only this, but they shall be purchased from among the heathen. How happens it that he has so long misunderstood his plain duty, —that instead of sending missionaries and Bibles to the heathen, he has not advocated the purchase

of slaves from among that unenlightened class of human beings?

Dr. Cheever refers us to Exodus, chapter xxi. verses 12, 14, 15 and 16, as establishing capital punishment for the murderer. We find it so, but beg leave to quote verse 17 of the same chapter: "And he that curseth his father or his mother shall surely be put to death." Let us now inquire whether he advocates the penalty of death for the individual who should curse father or mother?

There were *thirty-three* offenses punishable by death under the Mosaic Code. Dr. Cheever maintains the Divine authority of the Scriptures for the punishment by death of only one of those offenses, viz., that of murder, and remarks: "My judgment will remain as of old, unless you can show me the chapter and verse in which the penalty is done away with." With far more appropriateness may we ask Dr. Cheever for his authority in setting aside the death penalty for the *thirty-two* offenses specified in the Mosaic Code and the retention of that penalty for the *one* offense, than for him to ask our authority for the abrogation of that penalty for the *thirty-three* offenses. The quotation, 1st Timothy, chapter i. 8-11, as re-affirming capital punishment, by Paul, is exceedingly unfortunate for the cause which Dr. Cheever is endeavoring to maintain; for it will be noticed that the apostle Paul says that the law is made for the "unholy and profane, for murderers, manslayers, for liars, perjured persons," &c. It will be further noticed that the death punishment is not referred to in connection with any one of the of-

fenses named. But admit that it may, inferentially, be so construed, is Dr. Cheever ready to advocate capital punishment for liars and perjurors who, it will seem, are placed in the same category with murderers?

Dr. Cheever questions our authority for the position we occupy on the subject of the death penalty, and interrogates us in the following language: "Where have you learned or found the codicil to God's will, of which Paul unhappily was ignorant, abrogating that penalty?" Our reply will be found in the following chapter.





CHAPTER XV.

CHRIST AND THE GALLOWS.

“Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.”—MATT. vii. 12.

DR. Cheever, in his “Defense of Capital Punishment,” in 1846, is sorely troubled in reconciling God’s mercy toward Cain with his (Dr. C.’s) idea of what Cain’s punishment should have been; and his remark that “God spared Cain, and the consequence was that every murderer felt himself secure,” is but little short of an impeachment of the Divine wisdom. In the case of Lamech, also, who had slain a young man, and who like Cain was also spared, the Rev. gentleman uses the following remarkable language: “And God, we may suppose, was willing to permit the *experiment* of mildness in order to demonstrate more fully the monstrous wickedness of men.” Here, then, we find the learned divine impeaching not only the wisdom but the omniscience of Jehovah. As we have never worshipped a God of *experiments*, we know not how to answer so singular a remark. “Known unto God are all things from the beginning of the world” is the declaration

of the apostle; and sustaining this view of the Omnipotent Being, we must leave others to determine exactly how much importance may be attached to Dr. Cheever's style of reasoning. Standing upon his own ground, and possessing his peculiar views of Deity, we would find it an easy task to refute his propositions, and to establish the fact that the death penalty was *impliedly* abolished even in the Old Testament, and in the following remarkable words of Deity: "Wherefore I gave them statutes that were not good, and judgments whereby they should not live."—Ezekiel xx. 25.

And now to Dr. Cheever's inquiry, asking "where we have found the codicil to God's will, of which Paul, unhappily, was ignorant," we reply, that we have found no *codicil*, but have received the *New Testament* of "our Lord and Saviour Jesus Christ;" and as in human law the last will or testament is binding, so must the later will or *New Testament* of Christ and his apostles supersede the requirements of the "*Old*;" for in this great Testament has Jesus declared the purposes, not only of himself but also of the Father. In this *Testament* is found not only the teachings but the example of Him who spake as never man spake before. The teachings of Christ entirely reversed the old Jewish law of "evil for evil," and gave to the world those beautiful and sublime truths which, when embraced and observed by all, will render mankind elevated and happy. "Do unto others as ye would that they should do unto you; judge not lest ye be judged; condemn not and ye shall not be condemned; forgive and ye shall be forgiven :" these are the pr

cepts of the Gospel ; "glad tidings of great joy unto all men, peace on earth, good-will to men."

Fearing, however, that the Pharisees and "Retaliationists" might misunderstand his teachings, Christ quoted from the Mosaic Code and then pointedly rebuked it. He says, Matt. v. 38, 39 : "Ye have heard that it hath been said, an eye for an eye, and a tooth for a tooth (blood for blood) ; but I say unto you, that ye resist not evil : but whosoever shall smite thee on thy right cheek, turn to him the other also." Again, verse 44 : "But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you and persecute you ; that ye may be the children of your Father which is in heaven." We now ask Dr. Cheever whether he discovers an abrogation of the death penalty in the above quotations ? If not, we will try once more. Luke, chap. xiii. verses 51 and 58 inclusive :

"And it came to pass when the time was come that he should be received up, he steadfastly set his face to go to Jerusalem ; and sent messengers before his face, and they went and entered into a village of the Samaritans to make ready for him.

"And they (the Samaritans) did not receive him because his face was as though he would go to Jerusalem.

"And when his disciples, James and John, saw this, they said, Lord, wilt thou that we command fire to come down from heaven and consume them, even as Elias did ? But he turned and rebuked them, and said : Ye know not what manner of spirit ye are of. For the Son of Man is not come to *destroy* men's *lives*, but to *save* them."

If Dr. Cheever can not discover, in the above lan-

guage of Christ, a rebuke of that spirit of vengeance which upholds and sustains the gallows, then indeed is language powerless to convey it; and those professed Christians who maintain capital punishment in opposition to the direct language of the Saviour, must be left to cherish their own prejudices, for surely arguments cannot remove them.

Some few months since, we addressed a note to Rev. Robert Collyer, of Chicago, propounding the following questions: 1. "Does the Bible maintain the penalty of death as a punishment for crime?" 2. "In your opinion, is the death punishment necessary to the security and well-being of society?" Mr. Collyer replied as follows:

CHICAGO, Nov. 7, 1868.

M. H. BOVÉE.—*Dear Sir:* The first question you ask, must be answered: Old Testament, yes! New Testament, no!

The second: no! if the right theory is done to the man we now hang. What the thing is we ought to do I feel clear about in my own mind, but am cramped for the time to write it out in full, and will not anticipate your better wisdom in the book you are about to write. I am sure it will be there, and be better said than I can say it.

Fraternally yours,

ROBERT COLLYER.

To a letter of inquiry, Rev. Robert Laird Collier sent us the following brief but *pointed* reply:

CHICAGO, Dec. 18, 1868.

M. H. BOVEE, Esq.—*Dear Sir:* The time will come when capital punishment will be ranked with cannibalism. It is a relic of the worst barbarism. It is contrary to the spirit and genius of Christianity.

Yours very truly,

ROBERT LAIRD COLLIER.

Rev. Henry Ward Beecher places himself on our side of the question. The letter we insert has the “ring of the true metal.”

BROOKLYN, May 22, 1868.

MARVIN H. BOVEE.—*My Dear Sir:* In reply to your questions I would say, that in our age, and with the resources which Christian civilization has placed within reach of civil governments, there is no need of the death penalty; and that every consideration of reason and humanity pleads for its abolition. It does not answer well the ends of justice, and often defeats them. As an example, it tends rather to brutalify than to quicken the moral sense of spectators. And yet, while the fear of hanging does not deter men from crime, the fear of inflicting death deters many a jury from finding a just verdict, and favors the escape of criminals.

It is the rude justice of a barbarous age. We ought, long ago, to have done with it.

Truly yours,

HENRY WARD BEECHER.

The Rev. Mr. Frothingham sets forth his views in the following letter:

NEW YORK, *July 23d, 1868.*

My dear Sir:—Eighteen years ago, I gave the subject of capital punishment as thorough an examination as I could, and satisfied myself that it had no foundation in Scripture, or a weak one at most; decidedly a weakening one for Scripture; that it had no ground in ethics; that as a punishment it was uncertain, crude, Mosaical and ineffectual. I concluded that society, instead of being safer for it, would be at least as safe without; it rather incited to the shedding of blood than diminished its shedding; as a preventive of crime, it was of doubtful value; and as tending to reform criminals, it was of no value at all. These opinions I have never seen cause to alter. On the contrary, my reading and my reflection have only confirmed me in their correctness; and yet I have felt painfully the want of a positive philosophy that might actually do for society what capital punishment professed to do, and was supposed able to do.

The mere abolition of the gallows will effect but little. Forces must be set at work of a preventive and remedial character, which will bear directly on the moral element in the individual and in society. The sentimental part of the matter is exceedingly weak. There is great force in what John Stuart Mill said lately, in opposition to that. Saving austerities are needed; but they must be of a nature to touch men in their social relations and interests. In a word, “social science” is our great resource here, as in so many other cases.

When we understand the causes of crime, we shall know how to prevent it. When we have learned how criminals

are made, we may see the way clear to unmake them. Till we do that, the abolition of the gallows will supply no moral power. As soon as we begin to do that, the gallows will be felt as an absurdity.

Yours faithfully,

O. B. FROTHINGHAM.

MARVIN H. BOVEE,
Wisconsin.

Mr. Tilton, of *The Independent*, yields his testimony in favor of the cause of "abolition."

THE INDEPENDENT,

New York, *July 3, 1868.*

MR. MARVIN H. BOVEE.—*My Dear Sir:* During these busy days, I have no time to answer your inquiries by any thorough and precise statement of my reasons against capital punishment. But everybody who is familiar with my public utterances knows that I have always held that institution to be a relic of the Dark Ages—an affront to Christianity—a crime next in enormity to the very crime which it seeks to punish.

In my library is the rope which hung John Brown, who made the scaffold forevermore too sacred for any less noble man to die upon.

Fraternally yours,

THEODORE TILTON.

Rev. Dr. LeFevre, of Milwaukee, has been a life-long opponent of the barbarous law of capital punishment. He concludes a letter on this question, as follows:

* * * While we have urged that the death penalty

was not expedient, we have as yet said nothing of its positive injury. How much has been written and spoken, and how much more might still be written and spoken, to prove its demoralizing character on community. How the spectacle of a wretched fellow-creature swinging on the accursed tree, instead of deterring crime, leads directly to its commission by its hardening influence! So notorious is the fact, that, in many parts of the country, executions take place within the prison-yard, and a few only are admitted as witnesses.

How long the death penalty will darken the statute-book, it is difficult to determine. That it is doomed to be expunged from the criminal code, there can be but one opinion. All the tendencies of the age point in that direction. The great heart of humanity throbs for its extinction, and its pulse beats more quickly in view of every effort that is put forth to blot it out. It is well on the wane, and we pray that it may soon enter the blackness of darkness *forever*.

Yours fraternally,

C. F. LEFEVRE.

MILWAUKEE, *May* 10, 1868.

The Rev. Samuel J. May, of Syracuse, a highly esteemed and universally respected clergyman of that city, sends us a very interesting letter for this volume. We regret that we cannot find room for it entire:

* * * Never, until the life of man is held sacred; never, until the sentiment that "human life is inviolable" comes to prevail generally; never, until then, will the violation of life become rare. The Quakers and Moravians have always assiduously inculcated this sentiment; and I

believe there has not been more than one instance of a murder committed by a Quaker or Moravian. It is not the fear of the gallows that restrains men from the commission of murder. It is the sentiment of *respect for life*; the feeling that the life of man is sacred, which alone, in the moment of temptation, will withhold the hand from shedding blood. Let that sentiment be fully developed; let it be enlightened; let it be inculcated in the minds of all, with the care and earnestness which its importance demands, and the lives of all men would be safe in the hands of their fellows, excepting, perhaps, those in whom the light of reason is extinguished.

I am, yours very truly,

SAMUEL J. MAY.

The following excellent letter from the Rev. Dr. Bellows will be read with great interest:

WALPOLE, N. H. *July 26, 1860.*

M. H. BOVEE, Esq.—*Dear Sir:* You ask me to express, for publication in your forthcoming volume, my opinion on the subject of capital punishment. I must seize this moment of leisure to do so, although I regret to find myself without the documentary evidence collected by me when, some four years ago, I examined the subject with care. These I have left in New York, supposing, until this very hour, that I had brought them with me. Probably your work is already crowded with positive statistics, and will not miss what, at this particular moment, I miss very seriously. I proceed, then, to speak in general terms on the subject.

I am opposed to capital punishment, and desire to see it completely banished from the statute books of all States.

My opposition is not, however, an opposition of principle. I acknowledge the right of society to defend its own existence at the expense of human life. Nor have I any religious scruples about sending human beings unprepared into the presence of their Maker, or to their final account. The criminal seems to me quite as safe in God's hands as in ours, and as little in danger of premature judgment at His bar because he may have experienced it at ours. Nor do I think criminals are to be spared chiefly for the purpose of being regenerated. The State, I admit, must deal with them with main reference to its own highest good. The State owes protection to its citizens. It is bound to make the laws respected, and life and property safe from robbery and violence; and the course necessary to accomplish this, is, I think, lawful and right. If capital punishment achieved this, I should find no difficulty, on account of any principles involved in it, in giving it my sanction; and I think it could be sustained on the principles of the Divine government and from the Word of God.

When I commenced the study of this question in connection with the general investigation of the cause of crime and the remedies for it, I supposed capital punishment to be necessary and expedient. I had no doubt that the safety and well-being of society required it. Moreover, sad and afflicting as the necessity was, I could not well see how the State could maintain the Divine government, which, in my judgment, is lodged in the "powers that be," without claiming and exercising this last and awful prerogative. It seemed to me that the State would shrivel into a mere human institution if it laid down its power over the lives of its subjects. I expected to find ample support in the experience of states for this theoretical opinion, and looked upon all that had been written to the con-

trary as probably based on a morbid sentimentality or a superficial humanity. Had the statistics and practical observation of those who had closely and impartially studied, sustained my preconceived and, as I thought, Scriptural opinion, I should have turned out as firm a supporter of capital punishment as Dr. Cheever himself. I still see no reasonable ground for doubting that, if expedient, the State has, in its very nature and essence, and by the authority of the Bible, the right to punish certain crimes with death.

What was my surprise, then, to find an overwhelming mass of evidence from all the most candid and thorough students of crime, against the expediency of capital punishment. A study of the records of crime in the principal states of the world, seemed to place it beyond reasonable doubt, that capital punishments, instead of adding to the security of life, or deterring from capital crimes, actually increased them by promoting uncertainty of conviction, and by an inevitable discouragement and disuse of other means of prevention of a milder and more efficacious character. It has been clearly proved that crime is discouraged more by the certainty of punishment than by the severity of it, and that certainty is *diminished* in the precise ratio of severity. If it were certain that every man who commits a murder would be sent to hard work in prison for ten years only, it would have more effect in deterring from that crime than any severer laws, if every third man escaped from a penalty of imprisonment for life, or every other man from the death penalty. Severe and bloody laws, however just, cannot be enforced in the present state of society. They are therefore lax laws in operation. Crime accordingly flourishes under severe statutes because of their lax application. It is repressed by mild laws be-

cause society enforces them, and certainty, or a close approximation to it, accompanies convictions under them. If it be thought, as it naturally may be, that the principle of justice is wounded by allowing the murderer to live, and that even a higher expediency than the physical safety of society demands his life, I reply that practical experience testifies that the sentiment of mercy is more scandalized by capital punishment than the principle of justice is honored. As a rule, the people are smitten with pity for those who suffer death for capital crimes—look upon government and the ministers of justice as merciless and cruel, and have often vindictive and crime-disposing emotions aroused by the sight or knowledge of capital punishments. However morbid and unjust these feelings may be, their reality and the consequences of their reality are testified to by competent observers. We know what hangmen are in the public estimation; and, in our day, those who witness, are hardly less despised than those who execute capital punishments; and it has almost come to this, that the law is as unpopular as the hangman.

There must be some reason for so general or universal a change in public sentiment. It cannot be that capital punishments have always been inexpedient. They were commanded by the Jewish laws. They have, doubtless, in past ages done the State good service; but the sentiment has changed, unquestionably, from unconscious but not unsubstantial reasons. The whole faith of the world in a vindictive element in the Divine government is shaken. Human life in becoming more valuable has become more sacred. In the decline of war, and the disuse of weapons, or familiarity with violence and blood, a public disgust has grown up towards bloody laws and violent punishments. Prevention attracts more attention than cure; and

with the disuse of drugs and bleeding, a disinclination to the whip on the sailor's and the soldier's back, and to the rope around the criminal's neck, has become singularly active. A different philosophy of crime, an increasing sense of the responsibility which society has in first creating the criminal she punishes, a large and pitiful allowance for the want of education, nurture, or motives to virtue, in the outcasts of the world, and the sincere diminution of blame which formerly followed them, have strengthened the reluctance to capital punishments, and made any regular enforcement of the law impossible.

It is, then, because in the existing state of public sentiment (and it is a state that will increase and become universal, because it comes of the progress of Christian civilization) capital punishments diminish the safety of society, increase crime, demoralize juries, and bring courts and laws into contempt, that I am compelled to oppose them.

Very respectfully yours,

HENRY W. BELLOWS.

In response to an invitation to write an opinion for this work, Rev. A. D. Mayo, then of Albany, sent us the following letter, which breathes the very spirit of Christian charity :

ALBANY, N. Y., Feb. 20, 1861.

M. H. BOVEE, Esq. — *Dear Sir*: I most cheerfully respond to yours of a recent date, inviting me to express, for publication in your forthcoming volume, my views on the subject of capital punishment; and will briefly consider its bearings upon our present civilization, and why it should not be maintained by the Christian church.

It is acknowledged on all hands, that the most formida-

ble obstacle to the abolition of capital punishment is the conscientious scruples of the Christian clergy and influential members of the church. The Religious Public, so called, *i. e.*, the great body of ministers, church members, managers of religious institutions, and persons influenced by them, is always a powerful force in American society. It is not too much to say, that no social or civil reform can be accomplished in the face of the determined resistance of this class. For, although the members of churches constitute the numerical minority of the people, the influence of the church in creating theological and moral public opinion can hardly be overrated. No nation is better than its religion ; and while the religious public clings to any social abuse of the Past, it is hard even to gain the ear of the people for a dispassionate hearing against it—harder to create a party of reform—hardest of all to overcome the evil.

Such is now the condition of a large division of the religious public, in portions of our country, in respect to the abolition of the gallows. Thousands of excellent clergymen resist its abolition from the force of conscientious principles. It seems to them a grave departure from a time-hallowed custom ; a violation of the law of God, and the precursor of anarchy and infidelity in social affairs. Along with these, are found multitudes of devoted church members, who follow their pastors with more or less strength of conviction, but with an undercurrent of feeling that what such men resist must be in some sense a dangerous innovation. Doubtless this state of ecclesiastical opinion is gradually changing. The unanswerable refutations of the supposed Bible argument for “hanging” have had their effect in many quarters. Every intelligent layman must perceive that the argument in favor of the gallows

from the Old Testament, if pushed to its logical conclusions, would overturn American society, a Republican form of government, a free school, free labor, a free church—indeed, the whole system of American life would “fall flat” if compelled to rest upon such interpretation of the Hebrew Scriptures. The Old Testament is on the side of the Royalists; it does not forbid slavery and polygamy; it is silent in regard to almost every free institution we prize. Give to any American Congress the privilege assumed by a portion of the American clergy, to reconstruct our society on the Hebrew model, and the constitution of the United States, and of every State in the Union, would speedily disappear. This conviction is forced upon thousands of churchmen, and is bringing them to the idea that, good as the Hebrew constitution of society was for this peculiar people, in a peculiar age, it is in nowise binding on the United States to-day, further than it is actually adapted to our present wants. While every great moral precept of the Old Testament abides, the form in which these principles shall be embodied is left to the wisdom of the men of to-day. The only *consistent* course for the defenders of capital punishment is to adopt the political policy of the early Puritans of New England, and construct the state precisely after the pattern of the Jewish Theocracy. That experiment entirely failed; and we doubt whether legislators, and men and women of society, will again go to a Judaizing pulpit to receive the elements of political instruction.

It is also seen that the New Testament, alone, would never uphold the gallows; that while it is silent in the defense of capital penalties, its entire spirit is opposed to a code of retaliation. So the column of ecclesiastical opposition is really broken, and the church divided on this, as

on every great movement of reform in our country. But it cannot be denied, that the persistent, conscientious attitude of that portion of the religious public to which we have referred is a formidable hindrance to the revision of our whole criminal code, and the banishment of the gallows from our land.

While we accord perfect honesty of conviction to this class of ministers and their disciples, we have the right to show the people that too much weight should not be attached to arguments derived from this source. The ecclesiastical interest in every church, Pagan or Christian, is, by nature, conservative in excess. The priesthood, and that portion of the people under their immediate influence, are naturally interested in the preservation of things as they are. Any changes in society may endanger the stability of the institutions by which they act on the people; may abridge their influence, and modify the attitude of the state toward them. They are human, and behave like men and women in like circumstances. Every Pagan priesthood has been as fierce against human progress. The Jewish ecclesiastic crucified Christ. The Romish priesthood staved off needful reforms in the church, till the people and the German States split it in two forever. The Inquisition was established and sustained by men and women every way as intelligent, pious and self-sacrificing as those who now sustain the gallows. All these abuses seemed different to their supporters than to us; it appeared to multitudes of clergymen and church members as dangerous to abolish them as it now appears to abolish capital punishment. Thus, without impugning the motives of any man or class, we may warn the community against the attitude of this section of the upholders of the death penalty, and suggest that arguments from this quarter shall

be closely examined and viewed in the light of history, and explained.

One would suppose that the Christian clergy would be the foremost in demanding the abolition of this fearful custom. We had thought the peculiar office of the minister of Jesus Christ was to convert the fallen. We have inferred, from a pretty careful reading of the New Testament, that as Jesus came *especially* to save them that appear lost to the world, so His clergy should claim, as their especial care, those who have so deeply offended, that society has deprived them of its privileges. And if this be so, what a humiliating confession it is on the part of these men, that, just at this point, where a brother-man needs their care the most, they fail, and insist that the executioner shall relieve them of the blessed privilege of regenerating a fallen soul. Here, in the city of Albany, in which I live, a woman,* hardly more than a child, has been confined for two years under sentence of death. In this city are *sixty* churches and as many clergymen, all respected, powerful, able to command the aid of the wisest and best among our population for any good work. There is not a cultivated and religious woman, girl or wife, in the city, who cannot be persuaded by some one of these clergymen to do any good work within her power. Now, is not here the very state of things contemplated by Jesus when He established Christianity? A poor child-woman, such in sin, cast out by the State, condemned to die by the hand of that society whose laws she has violated, and sixty clergymen and churches commissioned to go forth and seek and save all who are lost. Would it not seem a matter of course that each of these ministers of Jesus would contend for the honor of converting the stray sheep; that every woman, who knows a woman's temptations,

* Mrs. Hartung.

would leave "no stone unturned" for the regeneration of their erring sister; that every church would experience a "revival" on purpose to concentrate its whole power on the fallen one?

What shall we say, then, when we behold grave clergymen, pious mothers, saintly maidens, powerful churches, all declining the duty—even insisting that the hangman shall kill that woman in broad daylight under the shadow of half a dozen temples? Is this woman too powerful to be subdued by all the religious public? Have these ministers exhausted their entire force of conviction and conversion upon her? Can not sixty churches, for one year, forget their sectarian wrangling, and unite to pour a blessed stream of love into that cell, that shall melt the heart of that condemned woman? Oh, could this united church of Albany thus bring her to repentance and reconciliation to God, and on some Sabbath-day hold a solemn festival, when, amid prayers, and sacred songs, and words of peace, the redeemed one could be restored to human society, each member of that vast throng pledging an oath before Heaven to be her brother or sister, to watch over her steps, would not that be a spectacle more inspiring to the Saviour of men than an execution, with the military, the civil power and the sheriff called in, to relieve the church of the impossible task?

Away with such a pretence as this! If the Church of Christ, in the United States, is too weak to reform the few murderers in each community, let it go into sackcloth for its own degeneracy. If the forty thousand clergymen of this Union are so effeminate, or worldly, or absorbed in sectarian policy, that they must clamor for a hangman to relieve them of the troublesome duty of saving a few hundred of the lost for whom a Saviour died, let the peo-

ple rebuke them. Our Saviour did not propose to crucify sinners, but was Himself crucified for them; and how can a true follower of His, consent that the worst man shall be put out of the world until he can be permitted to toil, to die, if need be, for his conversion.

Yours very truly,

A. D. MAYO.

The strength of the Christian religion cannot be determined by the numerical force of its believers, nor by the number of edifices which have been dedicated to its promulgation and advancement; but rather by the power it reveals in its adaptation to the needs of men. To *pray* for the hungry and naked is well; but to *give* them food and raiment is better. To *pray* for the criminal prisoner is appropriate indeed; but to *labor* for his reformation and restoration to society is far more effective in its results. To supplicate the Throne of Mercy in behalf of the prisoner standing upon the scaffold, may be consistent with the "plan of salvation," but to labor for the destruction of the scaffold, and all kindred cruelties devised by the vengeful passions of man, would be more in harmony with the teachings of the Christian religion.

To all who thus labor in His vineyard, has Christ promised that great inheritance: "Come, ye blessed of my Father, inherit the kingdom prepared for you from the foundation of the world."

But why this great inheritance? Jesus answered the question: "For I was a hungered, and ye gave me meat; I was thirsty, and ye gave me drink; I was

a stranger, and ye took me in; naked, and ye clothed me; I was sick, and ye visited me; I was in prison, and ye came unto me.” These were the words of the Saviour—words that should be written as in letters of “living fire” upon every human heart. It is the religion of Christ which bids men deal kindly one with another. ’Tis the religion of Christ which commands us to love our enemies, and to pray for those who spitefully use us. ’Tis the religion of Christ which bids man to pluck his fellow-man from the grasp of the *executioner*, and, in the loving arms of mercy and forgiveness, shield him from all danger. It is this blessed religion which penetrates the captive’s cell, and pours within its dreary walls the light of love and the warmth of affection. It is this religion which commands us to do unto others as we would that they should do unto us. It is this religion, “pure and undefiled,” which commands us “to visit the fatherless and the widows in their afflictions,” and bids us “mind not the high things of life, but condescend to men of low estate.”

Christ was the grand living exemplar of all that was good and holy in life. “He came to seek out and to save that which was lost.” His daily walk was among the poor and lowly of earth. He ate and drank with publicans and sinners. He sought to enlighten the ignorant, to elevate the unfortunate, and to cheer the despondent. He came to bind the broken-hearted and to whisper peace to the troubled. His apostles were men like ourselves, far, very far, from perfection. He administered the sacrament to Judas who betrayed Him, to Peter who denied Him, and to Thomas, the

faithless. In the few short years which were allotted Him, He founded that great plan whereby the nations of the earth might be saved. This sublime system of ethics, known as the Christian religion, will not crumble with the decay of empires, nor perish with the generations of men. Its flood-light of truth will yet reach the uttermost parts of the earth, and unite brother with brother in the bonds of love. It is emphatically a religion of association ; bidding us to labor with our fellow men that we may do them good. Its power is not visible in the silent places of the earth. It cannot be seen in the asceticism of monastic life, nor in the solitude of the hermit's cell. It cannot be found in the murky footprints of human creeds, nor yet in the mournful utterances of dyspeptic theologians ; but in its practical adaptation to the needs of men ; in its power to elevate the down-trodden and the unfortunate ; in the consolation it affords to the afflicted and distressed ; in the assistance it tenders to the needy and the poor ; in the benevolent action it enjoins ; in the sympathy it suggests ; in the purity it reveals ; in the riches it unfolds ; in its great power to build up ; in its efficacy to strengthen and support ; in the broad charities it contemplates, and in the fullness and completeness of its every essential part, do we behold the realization of our sublimest conceptions of the Christian religion. That theory which contemplates a return of "good for evil," whose basis is peace, and whose elements are love, must live and endure when all other systems shall have passed forever away.

Christ was the great living exemplification of the

truths He uttered. Though the temptations of life as-sailed Him, and the surging passions of human existence swept o'er His pathway, He stood firm and immovable like the rock at sea, which is buffeted in vain by the waves that dash against it. He stood in the majesty of His person and the plenitude of His power, clad in the habiliments of immortal truth. He murmured not, resisted not, when wicked men sought His life; but yielding with submission to the tortures of His persecutors, yet forgiving His murderers, He passed the portals of the tomb, but to rise amid the celestial splendors of the “resurrection morn.”





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